


# CAPITAL PUNISHMENT THE TWENTIETH CENTURY

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CAPITAL PUNISHMENT IN  
THE TWENTIETH CENTURY





# CAPITAL PUNISHMENT IN THE TWENTIETH CENTURY

by  
E. ROY CALVERT

*With a Preface by*  
THE RIGHT HONOURABLE  
LORD BUCKMASTER, P.C.

LONDON & NEW YORK  
G. P. PUTNAM'S SONS

WITHDRAWN

*First Published 1927*

*Made and Printed in Great Britain at the  
Botolph Printing Works, Gate Street, Kingsway, W.C.2*



## AUTHOR'S PREFACE

THIS little book has been written with the avowed object of presenting the case against Capital Punishment. In doing so, I wish to indicate clearly that my purpose is not a sentimental one. The sentimentalist I regard as the curse of any cause. Neither do I hold any brief for the murderer ; on the contrary, I recognise him often to be—in Dymond's phrase—

“ A depraved and deep violator of the law of God.” My objection to the Death Penalty is based upon the conviction that it is both *futile* and *immoral*, and that the interests of the community would be *best* served by its abolition.

The case against Capital Punishment is based upon a consideration of many widely different factors, and it is hardly to be expected that the reader will attach equal importance to them all. I shall endeavour to state the case as comprehensively as possible. Each argument, however, will be found largely independent of the remainder, and the reader must himself decide which considerations weigh with him most. But *all* the arguments against the Death

Penalty, marshalled together, constitute, in my view, an overwhelming case *against* it.

Some of the material of which this book consists appeared in the columns of *The Crusader* during the first half of 1926, and I am indebted to the Editor for his permission freely to use it again. My acknowledgments are also due to the Ministers of Legations and others, who have so courteously furnished many of the statistics and facts quoted in chapter III. To the many friends who have helped me by suggestions and criticism I tender my grateful thanks.

E. R. C.

*March 1927.*

# CONTENTS

CHAPTER	PAGE
INTRODUCTION BY THE RT. HON. LORD BUCKMASTER . . . . .	ix
I. CAPITAL PUNISHMENT AND THE PROTECTION OF SOCIETY. . . . .	3
II. CAPITAL PUNISHMENT AS A DETERRENT . . . . .	23
III. CAPITAL PUNISHMENT—THE POSITION IN OTHER COUNTRIES. . . . .	45
IV. CAPITAL PUNISHMENT AND PRISONS . . . . .	95
V. CAPITAL PUNISHMENT, THE PRESS AND THE COMMUNITY. . . . .	III
VI. CAPITAL PUNISHMENT AND ERRORS OF JUSTICE . . . . .	121
VII. CAPITAL PUNISHMENT AND TRIAL BY JURY . . . . .	135
VIII. CAPITAL PUNISHMENT, RESPONSIBILITY AND THE CAUSES OF MURDER. . . . .	149
IX. CAPITAL PUNISHMENT AND ETHICS . . . . .	169
X. THE ALTERNATIVE . . . . .	185
BIBLIOGRAPHY . . . . .	196
INDEX . . . . .	199



## INTRODUCTION

BY THE RIGHT HONOURABLE LORD BUCKMASTER, P.C.

THE whole subject of which Capital Punishment is simply a part has to be carefully studied. It is assumed that society has the right to punish as it pleases all offenders against its laws. The rule which should guide us, however, is not that of doing what the law says we have power to do but what reason, justice and humanity say we ought to do, and these forbid the continuance of Capital Punishment.

As we get older, we get possessed by the idea that conditions in the world are not so bad after all, and that anyhow, the present is much better than the times which have preceded it and it is no use for us to interfere. This, of all opinions, is the most detestable. The same feeling has been responsible for the continuance of savage laws since the earliest times in history. Hazlitt said in his day that the times were bad for those interested in social reform since everything that could be

accomplished had actually been done. There were no more peaks to climb or paths untrod.

Why did Hazlitt take this view of conditions which we are now ashamed to recall? If I may use a metaphor to explain my view, I would say it is because there is always a cloud of dust which follows the flying feet of the years and which prevents us from seeing the things that are near to us. People will look back with pity, contempt and horror on much of our social conduct to-day, just as we look back on the barbarities of a hundred years ago. When Hazlitt wrote, it was possible for men, women and children to be hanged for stealing five shillings from a shop, or forty shillings from a private dwelling house. Men found armed in a rabbit warren or fishing in other people's waters, were not only liable to be hanged but actually were hanged. People who were then administering the law were just as human and upright as they are to-day; but were quite unable to see how horrible the conditions were. It is the same to-day with regard to Capital Punishment. People cannot realise its horror. Some think it manly to pay no attention to a man being flogged or killed. They believe it mere sentiment to think otherwise. But to me the only hope of the human race lies in increasing the feeling of sanctity for human life. Without this realisation



we shall never get rid of slums, of poverty or of crime.

If we believe life to be the most mysterious and sacred thing there is, we are, through Capital Punishment, desecrating the very thing we should hold high, and in executing the criminal are committing the same crime as that for which he has been condemned.

People who can contemplate the stories published in some of the papers about executions must be made of curious stuff. It was reported some months ago that at a recent execution there were people listening with their ears against the walls of the prison so as to hear the thud of the falling body. Are people elevated by such an experience as this? Does it not react to the evil of our people? The aim of all reformers should be to maintain, despite sneers and scoffing, that wherever we find life, it is a matter for wonder and admiration, wherever we find human life, a matter for the profoundest reverence.

Even looked at materially, the Death Penalty fails utterly of its purpose. It does not stop murders in the least. A man does not commit murder after methodical calculation. He commits it because his environment has not taught him to exercise control over his savage feelings, and the only remedy is to

In the early ages, the social edifice rested on three columns, Superstition, Tyranny, Cruelty. To those who regret Superstition we say, "God remains for us!" To those who regret Tyranny we say, "Our country remains!" But to those who could regret the Executioner we can say nothing.

VICTOR HUGO.

→ In our age and with the resources which Christian civilisation has placed within the reach of civil governments, there is no need of the death penalty; and every consideration of reason and humanity pleads for its abolition. It does not answer well the ends of justice and often defeats them. It is the rude justice of a barbarous age.

HENRY WARD BEECHER.

## CHAPTER I

# CAPITAL PUNISHMENT AND THE PROTECTION OF SOCIETY

LET us confess at the outset that few people—even its most ardent supporters—would seriously maintain that Capital Punishment is a good thing in itself, to be encouraged for its own sake. Those who believe in hanging, frankly confess it to be a horrible and revolting practice. They maintain, however, that it is necessary in order to protect society. “Capital Punishment,” they say, in effect, “is a necessary deterrent, without which there would be more murders; it is therefore essential for the protection of society and the maintenance of our social life.” If such a claim were justified, it would be, of course, a very powerful argument for the retention of the Death Penalty, and as such it demands our most careful consideration.

It is important to realise that this same plea about the protection of society was invariably used to justify the infliction of all the barbarous punishments of the past, for offences many of

which were so trivial that magistrates would dismiss them to-day with a fine. Experience has shown that the discontinuance of these terrible penalties was accompanied by none of the evil consequences which their champions foretold, yet they were always justified "in order to protect society." Looking back, one is astounded at the extent to which our forefathers believed in the Death Penalty as a method of government. In the reign of Henry VIII, it is estimated that 72,000 executions took place,\* mostly for quite trivial offences, and as late as 1780 the English law recognised over two hundred capital crimes. Felling a tree, stealing five shillings, robbing a rabbit warren and pickpocketing were all capital offences, and you could be hanged for associating for a month with gipsies, or for assuming the title of a Greenwich Pensioner! It is true that these penalties were not always carried out, but often they were; and they were always upheld for their deterrent value.

Until 1772 a person accused of felony who for the sake of his family refused to "plead," because by so doing he prevented the confiscation of his estates, was stripped naked, laid on the floor of his cell, fed on daily decreasing quantities of mouldy bread and

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\* Holinshed, quoted Romilly, House of Commons Debate, February 9th, 1810.

stagnant water, and slowly pressed to death by increasing iron weights placed on his body. When, in the early part of the last century, Sir Samuel Romilly endeavoured to secure the abolition of drawing and quartering, he was denounced by the law officers of the Crown as "breaking down the bulwarks of the Constitution," and it was only about a hundred years ago that this "Godly butchery," as it was called, finally came to an end.

Samuel Rogers, the Poet-Banker, tells how he once met "a cartload of young girls, in dresses of various colours, on their way to be executed at Tyburn." His friend Greville, who was present at a trial where several boys "to their own excessive amazement" were sentenced to be hanged, remarked, with great naïveté, "Never did I see boys cry so."\* In 1831 a boy of thirteen, John Bell by name, was hanged at Maidstone. Two years later a boy of nine, named Nicholas White, pushed a stick through the broken glass of a London shop window and raked out a few pieces of children's painting colours, valued at twopence. For this offence the unfortunate boy was dragged before Mr. Justice Bosanquet at the Old Bailey, and solemnly and seriously sentenced to be "hanged by the neck

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\* *Table Talk of Samuel Rogers*. Edited by Rev. A. Dyce. 3rd edition, 1856, page 185.

until he was dead.”\* All these ferocious sentences, and their infliction even upon young children, were strenuously defended by those in authority as essential for the protection of society. When in 1810 Sir Samuel Romilly brought a proposal before the House of Commons to abolish Capital Punishment for shoplifting to the value of five shillings and upwards—one of the first proposals of its kind, and the forerunner of many other attempts by reformers to mitigate the barbarity of the then existing criminal law—the most eminent jurists of the country strongly deprecated the proposed reform. The Solicitor-General declared :†

I am proud to confess that I am an enemy to the opposition of theoretical speculation to practical good.

Colonel Frankland said : ‡

So far from having any disposition to alter the existing law, if I rightly understand what has been said by some honourable gentlemen who have spoken this night, all the Judges of the land are convinced that the proposed reform is fraught with consequences the most injurious. . . . We have been told that our code of criminal laws has been con-

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\* Quoted by Alfred H. Dymond, *The Law on its Trial*, 1866, p. 58. The sentence was subsequently commuted.

† House of Commons Debate, February 12th, 1810.

‡ House of Commons Debate, May 1st, 1810.



sidered sanguinary by all foreigners. Possibly it may : but of what importance is this when we know that its practical humanity is consistent with the kindness of our national character.

Shortly afterwards, in the Lords' debate on the same proposal,\* Lord Ellenborough, the spirited defender of Warren Hastings and famous Lord Chief Justice, said :

I trust your lordships will pause before you assent to an experiment pregnant with danger to the security of property, and before you repeal a statute which has so long been held necessary for public security. I am convinced with the rest of the Judges, public expediency requires there should be no remission of the terror denounced against this description of offenders. Such will be the consequence of the repeal of this statute that I am certain depredations to an unlimited extent would be immediately committed.

Speaking of the other learned Judges, he said :

They are unanimously agreed that the expediency of justice and the public security requires that there should not be a remission of Capital Punishment in this part of the criminal law.

His Lordship was so concerned at the proposal,

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\* House of Lords Debate, May 30th, 1810. The measure was defeated by 31 votes to 11, and in the majority were an Archbishop and six Bishops !

that he actually intervened a second time in the debate with the following appeal :

My Lords, if we suffer this Bill to pass, we shall not know where to stand ; we shall not know whether we are upon our heads or our feet.

Repeal this law and see the contrast—no man can trust himself for an hour out of doors without the most alarming apprehensions, that, on his return, every vestige of his property will be swept off by the hardened robber.

We can afford to smile at such utterances now, but it is important to realise that they were made in all seriousness in the last century, not by a few irresponsible extremists, but by those upon whom rested the responsibility of government. Yet the fears expressed by Lord Ellenborough and his fellow Judges have been proved by experience to be quite groundless, and his pompous prophecies concerning the increases in crime which would follow abolition, were completely falsified by subsequent history.

Capital Punishment was repealed for cattle, horse and sheep stealing, larceny and forgery in 1832, for housebreaking in 1833, for the stealing of letters by Post Office servants in 1835, and for burglary and stealing in dwelling houses in 1837. For several years prior to its abolition for these offences the penalty was seldom inflicted.

Returns made to the House of Commons,\* which gave the total commitments for certain of these and other offences for three years before the last execution, and for three years immediately following, indicate that during the three years ending with the last execution, the number of persons committed for these crimes was greater than during the three years immediately following. In some cases these offences may have been indicted differently before abolition in order to avoid the capital penalty, a fact which probably explained the few subsequent increases which are indicated.

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\* Quoted by Phillips, *Vacation Thoughts on Capital Punishment*, 1858, p. 32.

NUMBER OF PERSONS COMMITTED IN ENGLAND AND WALES FOR VARIOUS CRIMES DURING THE THREE YEARS IMMEDIATELY PRECEDING THE REPEAL OR DISCONTINUANCE OF THE CAPITAL PUNISHMENT FOR EACH OFFENCE, AND THE THREE YEARS IMMEDIATELY SUBSEQUENT.

Crime.	Last Execution.	Three years before repeal, etc.		Three years after repeal.
		Committed.	Executed.	Committed.
Cattle stealing, three years ending	1820	113	3	67
Horse stealing, do.	1829	590	22	566
Sheep stealing, do.	1831	787	7	793
Stealing in dwelling houses, do.	1831	422	4	520
Forgery, do.	1829	213	15	180
Coining, do.	1828	39	7	14
Letter stealing, do.	1832	11	1	14
Sacrilege, do.	1819	24	2	25
Housebreaking, do.	1833	2103	8	2410
Burglary, do.	1836	787		
Robbery, do.	1836	1053	5	889
Arson, do.	1836	191	17	113
Riot and felony, do.	1832	208	6	60
Piracy, do.	1830	52	2	2
Attempts to murder, do.	1841	661	2	707
(Capital) assaults on females, do.	1836	174	5	185
Other offences, do.	1835	69	9	75
TOTAL		7,497		6,620
DECREASE, 877.				

In the table overleaf, the statistics contained in the preceding schedule have been combined with other figures showing the number of persons tried for similar offences during a present-day three-year period. For several reasons such figures cannot pretend to be quite comparable. The classification in some cases may differ ; it may be safely assumed that the police are more efficient than a century ago and consequently persons are brought to trial in a larger percentage of the crimes known to them ; finally, the population of England and Wales was 37,885,242 in 1921, compared with only 13,896,797 in 1831, and to secure a sound basis of comparison the present-day figures should properly be divided by three. Despite such difficulties, however, the figures do illustrate in some measure how crime has decreased during the last century, despite, or perhaps because of, the introduction of more lenient penalties. The exceptional increases of such offences as forgery, coining and letter stealing are due to the greatly increased facilities for committing such crimes, and in some instances to the passing of subsequent statutes which have greatly extended the definition of offences now classified under these heads.

NUMBER OF PERSONS COMMITTED IN ENGLAND AND WALES FOR VARIOUS OFFENCES DURING THE THREE YEARS IMMEDIATELY PRECEDING THE REPEAL OR DISCONTINUANCE OF THE CAPITAL PUNISHMENT FOR EACH OFFENCE, FOR THE THREE YEARS IMMEDIATELY SUBSEQUENT, AND FOR THE THREE YEARS 1922-1924.

Crime.	Last Execu- tion.	3 years before re- peal, etc.	3 years after re- peal, etc.	3 years 1922- 1924.*
Cattle stealing	1820	113	67	389
Horse stealing	1829	590	566	
Sheep stealing	1831	787	793	
Stealing in dwelling houses	1831	422	520	412
Forgery . . .	1829	213	180	729
Coining . . .	1828	39	14	68
Letter stealing	1832	11	14	209
Sacrilege . .	1819	24	25	97
Housebreaking	1833	2103	2410	{ 2653
Burglary . .	1836	787		{ 1169
Robbery . . .	1836	1053	889	238
Arson . . . .	1836	191	113	341
Riot and felony	1832	208	60	135
Piracy . . . .	1830	52	2	nil
Attempts to murder . . .	1841	661	707	101
Capital assaults on females .	1836	174	185	} not available
Other offences	1835	69	75	
* Extracted from Criminal Statistics, 1924.				



These general results for England and Wales are in agreement with a further Return\* to the House of Commons relating to the County of Middlesex.

NUMBER OF EXECUTIONS WHICH TOOK PLACE FOR LONDON AND MIDDLESEX IN THREE YEARS ENDING DECEMBER 31ST, 1830; IN THREE YEARS ENDING DECEMBER 31ST, 1833; AND IN THREE YEARS ENDING DECEMBER 31ST, 1836; TOGETHER WITH THE NUMBER OF COMMITMENTS IN EACH OF THOSE PERIODS RESPECTIVELY, FOR OFFENCES THAT WERE CAPITAL ON JANUARY 1ST, 1830.

Periods.			Executed.	Committed.
In 3 years ending Dec. 31st, 1830			52	960
Ditto	ditto	1833	12	896
Ditto	ditto	1836	nil	823

It has been pointed out† that such returns are not wholly conclusive, because, for some years prior to the last executions referred to, the Death Penalty was only inflicted upon a small percentage of the persons actually condemned. This may be true. We cannot, however, gainsay the fact that the period during which the Death Penalty was gradually

\* No. 165, dated March 23rd, 1837. Quoted Phillips, *op. cit.*, p. 33. See also Minute of Evidence 207, pp. 30-31, Royal Commission Report on Capital Punishment, 1866.

† See Sir George Bramwell's evidence before Royal Commission, *op. cit.*, pp. 30-32.

discontinued and finally abolished for these lesser offences, was also marked by a decrease in crime.\*

Undoubtedly, the greater certainty of conviction following abolition had more to do with the decrease than changes in the actual nature of the penalty; but this in itself constitutes an argument against the Death Penalty, for the latter is always responsible for a greater measure of uncertainty.† Indeed the chance of conviction for capital offences just before the mitigation of the law a hundred years ago was so slight, owing to the high percentage of commutations and the reluctance of juries to convict, that professed criminals were said to prefer to be indicted capitally, because there was a much greater chance of escape.‡

This fact is well illustrated by a remarkable petition presented to the House of Commons on May 24th, 1830, by Mr. Brougham on the occasion of Sir Robert Peel's Bill for the consolidation of the laws relating to forgery. This petition, which bore the signatures of firms representing over one thousand bankers from 214 different towns, was as follows :

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\* The statistics were also influenced by the social changes of the period. See below, pp. 16-17.

† See below, chapter VII.

‡ See Royal Commission Report, *op. cit.*, p. 632.

That your petitioners as bankers are deeply interested in the protection of property from forgery, and in the conviction and punishment of persons guilty of that crime.

That your petitioners find by experience, that the infliction of death, or even the possibility of the infliction of death, prevents the prosecution, conviction and the punishment of the criminal, and thus endangers the property which it is intended to protect.

That your petitioners, therefore, earnestly pray that your honourable House will not withhold from them that protection to their property which they could derive from a more lenient law.\*

There is little sentiment here, but a clear indication that the commercial world realised the Death Penalty for injury to property to be contrary to its own interests, which would be better protected by a penalty less severe. The reluctance of juries to convict on capital charges is further evidenced by the verdicts which were frequently brought in, contrary to the facts. Speaking on this point in the House of Lords in 1833, Lord Suffield declared :

I hold in my hand a list of 555 perjured verdicts delivered at the Old Bailey in 15 years, beginning with the year 1814 for the single offence of stealing from dwellings, the value stolen being in these

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\* Quoted, *Memoirs of Sir Thomas Fowell Buxton, Bart.*, "Everyman" edition p. 113.

cases sworn above forty shillings but the verdicts returned being to the value of thirty nine shillings only. If required, I will produce the name of every one of these 555 prisoners, and show the value proved to have been stolen was upwards of 40 shillings. . . . It deserves remark that when the legislature raised the capital indictment to five pounds in June 1827, the juries at the same time raised their verdicts to four pounds nineteen shillings ; still keeping it low enough to save the offender's life. This has happened under the one head of stealing only.\*

The mitigation of Capital Punishment, and its final abolition for offences against property, coincided with very great political and social changes which undoubtedly influenced the frequency of crime. Offences against property are often the product of bad social conditions, and we shall expect, therefore, to find an *increase* in crimes of this character during the "Hungry Forties" ; on the other hand, the passing of the Combination Act in 1824, and the subsequent formation of various social and industrial organisations, no doubt fostered a spirit of co-operation and mutual helpfulness among the people which reacted favourably in *reducing* crime. So great were the social changes and

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\* House of Lords Debate, August 2nd, 1833.

upheavals of the period, that no hasty generalisations about Capital Punishment, based upon the criminal statistics of particular years, would be wholly conclusive. But of the general inference to be drawn from the facts, there can be no question. England abolished Capital Punishment for offences against property during one of the most difficult periods in her social history. *At the end of that period, the country had less crime against property, without Capital Punishment, than at the beginning she had with it.* The Death Penalty, therefore, was *not* the necessary deterrent which its supporters so emphatically declared it to be.

It is customary to-day, particularly among certain representatives of the legal profession, to object to these references to the past infliction of Capital Punishment for quite trivial offences, as wholly irrelevant to its present infliction for murder. It is not possible, however, to dismiss the analogy quite so easily. There are, of course, vital differences between trivial offences such as those we have been considering, and murder, which is rightly regarded as one of the greatest of all crimes. But the difference is not only one of *degree*. There is the less obvious but no less relevant difference in *character*. A crime against property is usually premeditated, whereas the majority of murders are the outcome of sudden

passion.\* It is obvious that if Capital Punishment *were* a successful deterrent for crime, it would have been much more effective for premeditated than for passionate crimes. How small a deterrent effect the Death Penalty actually had in the case of these lesser and premeditated offences against property, is illustrated by the fact that at the time when pick-pocketing was a capital crime, the occasion of a crowd, gathered for a public execution, was recognised as the most favourable opportunity for the pickpocket to ply his trade! †

It was stated in evidence before the Royal Commission of 1866 that:

of the 167 persons under sentence of death in Bristol attended by the Revd. W. Roberts, Prison Chaplain, no less than 164 had been present at public executions. ‡

Actual experience in our own country has shown the Death Penalty *not* to have been a necessary deterrent for these lesser and usually premeditated crimes, and this fact should make us even more

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\* This will be considered in detail later. See chapter II.

† Barrington, quoted by Phillips, *op. cit.*, p. 71, states that thieves selected the moment when the strangled man was swinging above them as their happiest opportunity, because they shrewdly argued "everybody's eyes were on one person and all were looking up."

‡ Hill's letter in R.C. Report, 1866, p. 632.



doubtful of its value in the case of murder. As Sir William Harcourt so well expressed the matter in the Parliamentary debate of 1877 :\*

If the punishment of death did not prevent men from stealing horses, why was it more likely to prevent them committing murder ? Murder was generally committed under the influence of violent passion ; and if it was found that the punishment of death did not deter in the case of crimes which were committed in cold blood, was it possible, was it reasonable to suppose that it would act as a greater deterrent in the case of murder ?

This question of deterrence will be further discussed in the next chapter.

## SUMMARY OF CHAPTER I

*The infliction of Capital Punishment in England for trivial offences in the past was always supported by the plea that it protected society. Nevertheless, its gradual abrogation, and final abolition, for these lesser offences, was accompanied by a decrease in the crimes for which it was formally inflicted. Yet the number of these offences was far more likely to be influenced by the Death Penalty than murder, since they were usually committed in cold blood, whereas murder is usually the outcome of sudden passion.*

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\* House of Commons Debate, June 12th, 1877.



CHAPTER II

CAPITAL PUNISHMENT AS A DETERRENT

There is no passion in the mind of man so weak but it mates and masters the fear of death.

Revenge triumphs over death, love slights it, honour aspireth to it, and grief fleeth to it.

BACON.

The majority of authors of violent and reckless crimes, especially homicide, manslaughter, and serious assaults, are under such influence of passion as to obscure reason and reflection for the time being, . . . they are not thinking at all at that moment of the consequences of their acts.

BERNARD HOLLANDER, M.D.

The very advocates of the Punishment of Death who contend, in the teeth of all facts and figures, that it does prevent crime, contend in the same breath against its abolition because it does not ! “There are so many bad murders,” say they, “and they follow in such quick succession that the punishment must not be repealed.” Why is not this a reason, among others, *for* repealing it ? Does it not shew that it is ineffective as an example ; that it fails to prevent crime ; and that it is wholly inefficient to stay that imitation or contagion, call it what you please, which brings one murder on the heels of another. •

CHARLES DICKENS.

## CHAPTER II

### CAPITAL PUNISHMENT AS A DETERRENT

THE very consideration of *deterrence* in relation to crime, constitutes a confession of failure—failure, that is, to remove the root causes of wrongdoing. The best method of preventing crime is to eliminate the conditions which produce it; deterrence is concerned not with the removal of fundamental causes but with the fear of consequences. To make the results of wrongdoing so unpleasant to A that B will be frightened into a negative sort of virtue, is not only a poor achievement but it is psychologically unsound, for in this way you only suppress the outward expression of the evil desire, and the desire itself remains to work itself out in other ways. The real task for society should always be to remove the root causes of crime. By placing the emphasis upon the criminal rather than upon the various forces which go to make him what he is, a retributive punishment actually hinders the accomplishment of this fundamental aim. The abolitionist recognises—perhaps more than most people—the need to protect society against murder,

but he realises that the problem cannot be solved by the mere infliction of unpleasant consequences.

It is obvious that Capital Punishment is no *complete* deterrent, for we still have murders. There are approximately 150 murders committed annually in England and Wales, and this figure, as was pointed out in the Criminal Statistics for 1924, has been constant for the last fifty years. The population has, of course, increased during this period, and the number of murders proportionate to the population has therefore declined. The decrease, however, can hardly be credited to Capital Punishment, since the law has undergone no appreciable change during this period, and the same factors have been present throughout.\*

Obviously, if Capital Punishment were a complete deterrent these murders would not have been committed. Every one of the 150 murders known to the police annually measures the partial failure of the Death Penalty as a deterrent.

“But,” the defender of Capital Punishment will say, “no one suggests that the Death Penalty is a complete deterrent, but without it there would be more murders.” According to this view there are

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\* See also chapter III. Some of the countries where the Death Penalty has been abolished have experienced an even more marked decrease during this period.

plenty of potential murderers in our midst who are longing to commit murder but are merely deterred by the fear of hanging! Mr. Bowen-Rowlands in his recent book\* asserts that the onus of proving the case for the retention of Capital Punishment must rest upon its supporters. This is certainly true of the particular consideration under notice. More impressive arguments for the continuance of Capital Punishment must be forthcoming from its supporters than the mere assumption that there are large numbers of persons in our midst—wolves in sheep's clothing—deterred from murder merely by the fear of hanging. What justification is there for such an assumption? We must remember that Capital Punishment has already been dispensed with in many of the civilised countries of the world.† If large numbers of potential murderers *were* only awaiting the abolition of the Death Penalty in order to fulfil their evil designs, it follows that murders would inevitably have increased in each of the countries which have dispensed with it.‡ The fact

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\* *Judgment of Death*, by G. Bowen-Rowlands, pp. 159-169. Collins, 15s.

† See chapter III below.

‡ I do not here suggest that there are no "potential" murderers, but that there is no large class of them *only* deterred by the fear of hanging. See below, chapter VIII.



that this has not happened\* effectively disposes of this particular argument. In considering the deterrent value of Capital Punishment we shall do well to restrict ourselves to the study of the murderer as we know him in fact, and not to postulate its effect upon imaginary persons, the very existence of whom is purely hypothetical.

The first factor to be considered about the deterrent value of any punishment is the state of mind of the person likely to commit the offence for which it is inflicted, for no punishment can possibly deter unless the consequences are adequately considered by the person concerned. Now murder is seldom a "cold-blooded" crime, but is nearly always committed under the influence of violent passion, when the murderer is obviously incapable of considering consequences. This fact is effectively illustrated by an official report which the Home Office issued some years ago,† analysing the motives, or causes, of the murders committed by all the convicted murderers in England and Wales during the twenty years ending 1905. It is to be regretted

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\* See chapter III.

† In reply to a question in the House of Commons on Wednesday, December 15th, 1926, Captain Hacking stated on behalf of the Home Secretary that in view of the considerable labour involved he could not promise to furnish a further return with more recent information.

that the Home Office has not repeated this detailed information for subsequent years, but there is no reason to believe that more recent figures would greatly vary from those given. The following table, with extracts from the official comments accompanying it, both reproduced from this report, are most instructive :

# MOTIVES OR CAUSES OF THE MURDERS COMMITTED BY WALES DURING THE

MOTIVE OR CAUSE	MURDERS BY MEN.				
	Men	Women.			Children.
		Wives.	Paramours & Sweethearts.	Other Women.	
Drink . . . .	14	45	18	5	4
Quarrels or violent rage .	19	25	20	—	4
Jealousy and intrigues . .	2	42	37	—	6
Revenge . . .	38	—	17	16	4
Robbery . . .	31	—	—	17	—
For Insurance money . . . .	—	—	—	—	—
Extreme poverty	—	4	4	—	9
Illegal operations	—	—	2	4	—
To remove obsta- cle to marriage, etc. . . . .	—	4	1	—	—
Shame and disgrace . . .	—	—	—	—	—
Sexual passion .	—	—	3	11	12
Other causes or not known	42	4	13	6	4
	146	124	115	59	43
		298			

Reproduced from *Introduction to the Criminal Statistics for 1905, England and Wales*, p. 52. In furnishing this return the Home Office rightly emphasises the fact that the causes shown are only approximate. For many crimes, one of several motives might reasonably be assigned. For example, in several cases either

# AS A DETERRENT

29

ALL PERSONS CONVICTED OF MURDER IN ENGLAND AND  
20 YEARS ENDING 1905.

Total.	MURDERS BY WOMEN.				GRAND TOTAL.
	Men.	Women	Children.	Total.	
86	2	2	—	4	90
68	—	—	—	—	68
87	2	3	—	5	92
75	2	—	—	2	77
48	—	2	—	2	50
—	—	2	1	3	3
17	1	—	21	22	39
6	—	6	—	6	12
5	—	—	4	4	9
—	—	—	4	4	4
26	—	—	—	—	26
69	—	—	12	12	81
487	7	15	42	64	551

“jealousy” or “drink” might be stated as the motive of the crime. If anything the analysis is too conservative, e.g. far more crimes probably had a sex passion basis than is shown; the table as it stands is, however, sufficiently suggestive for our purpose.

The following extracts from the official comments on, and interpretation\* of, these figures are illuminating :

The first fact to be noted is that murder is as might be expected the crime of men ; murder means murder by men in the great majority of cases. . . . They are about seven times as many as females. Out of a total of 552† persons sentenced to death since 1885, 488 or 88.26 per cent. were men. These figures are the more remarkable because as to women they include cases of child murder, to which they are of course much more prone than men.

The next point to be noted is one rarely mentioned : the great majority of persons murdered are women. They are as three to two. . . . Murder means to a great extent the murdering of women by men.

A further point to be noted as to murders committed by men is the very large proportion of murders of wives. Out of a total of 487 murders for which men were sentenced to death during the period under consideration, there were 146 murders of men, and 43 of children while no fewer than 124, or about one in four, were murders of wives by husbands. Adding to these, the number of murders of

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\* Prepared by Sir John Macdonald, C.B., LL.D., Master of the Supreme Court, *Criminal Statistics for 1905, op. cit.*

† The discrepancy of one in the official returns between this total and that shown in the table on p. 29 is not understood,

mistresses (76) and sweethearts (39), they make a total of 239 or nearly one half of the whole.

Next as to the age of persons convicted of murder. The great majority of such crimes are committed by persons from 21 to 40 years old, that is in the period of greatest physical vigour. In fact about 59 per cent. of the whole number of persons convicted between 1886-1905 were between those ages, though the persons between those ages are only 30 per cent. of the population.

The average age of the children who were murdered was about one year and three months. Nearly all were illegitimate and more than half were drowned.

A statement showing the day and hour at which the murder was committed, in the 208 cases in which the fact has been ascertained, indicates that:

The highest figure is on Saturday, the lowest on Sunday. It will be noticed that about one-fifth of the murders were committed between 10 p.m. and midnight and nearly half between the hours of 8 p.m. and 2 a.m.

To what classes do those convicted of murder belong? The answer must be that a large proportion are of the poorer classes.\*

The majority of murders appear to be committed in densely populated urban districts, sea-ports, manufacturing towns and mining districts. London, Lancashire, Warwick, Stafford and Durham are the

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\* For relation of poverty to murder see below, chapter VIII.

counties in which they are most numerous; the large number of cases in the mining and coal shipping district of the last named county is very marked.

Sir John Macdonald concludes his survey in the following words :\*

I hesitate to draw any conclusions from imperfect data as to matters of great complexity, but I am inclined to think that this crime is *not generally the crime of the so-called criminal classes* but is in most cases rather an *incident in miserable lives in which disputes, quarrels, angry words and blows are common*. The short history of the large number of cases which have been examined might be summed up thus :— Domestic quarrels and brawls; much previous ill-treatment; drinking, fighting, blows; a long course of brutality and continued absence of self-restraint. This crime is generally the last of a series of acts of violence.

There is, however, a clearly marked class of murders, *of rare occurrence, the motive of which is robbery*, committed by habitual criminals and forming the climax, and usually the termination, of a career of crime.

Let us summarise these conclusions. Nine out of every ten murders are committed by men, and two out of every three persons murdered are women; of the women murdered by men, 42 per cent. are their wives and a further 38 per cent. their mistresses

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\* The italics are mine.



or sweethearts, together making four-fifths of the total number. Nearly one-half of the murders are committed between 8 p.m. and 2 a.m.; most murders occur in densely populated districts, and a large proportion among the poorer classes; murder is not generally the crime of the so-called criminal classes but rather an incident in sordid lives, where drink and blows are common. Murders for robbery committed by habitual criminals are of rare occurrence; less than 10 per cent. of the total murders committed are attributed to mercenary motives, yet these are the most likely to be the premeditated and cold-blooded crimes. On the other hand, drink, quarrels and violent rage accounted for 29 per cent., jealousy, intrigues and revenge for over 30 per cent., and extreme poverty and sexual passion\* a further 10 per cent.

It is obvious from this analysis that most murders are committed under conditions which preclude an adequate consideration of consequences. This fact goes a long way to explain why the Death Penalty has not deterred the murderer in the cases of murder under notice; its failure appears to be inherent in the passionate nature of both the

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\* As already suggested (footnote, page 29 above), sexual passion has probably been the root cause of many of the crimes classified under other heads.

murderer and his crime. Sir John Macdonald's survey further suggests that many of the murders analysed have been due as much to bad social conditions as innate wickedness, and that an improved social life would succeed in eliminating many of the crimes which a retributive punishment has failed to prevent.

It is true that this conclusion does not apply to *all* murders. There are a certain number—Sir John Macdonald says they are “of rare occurrence”—which are not crimes of a passionate nature but seemingly premeditated and cold-blooded. Even these crimes have not been prevented by the Death Penalty since they have been perpetrated in defiance of it; in such instances how can one explain its deterrent failure. The murderer who commits an apparently cold-blooded crime is of a type which needs to be studied if we are to understand the failure of the Death Penalty to deter him. One of the most common characteristics exhibited by such a person is an exaggerated sense of confidence in his ability to escape detection which rules out any thought of consequences. This\* is particularly

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\* A prison chaplain with some experience of such cases said not long ago, “Of course, no fear of punishment will ever deter a poisoner, for he is so conceited that he never thinks he will be found out.”

true of the "poisoner," the murderer who usually arouses most public resentment. It should not be forgotten also that a certain type of murderer, strange as it may appear, is actually attracted by the notoriety which the principal actor in a murder trial enjoys, and for such a person the Death Penalty has a certain morbid fascination. It may be difficult to understand his mentality—he is obviously abnormal—but so much positive evidence exists that it is impossible to doubt that a few murderers are of this type.

As our knowledge of the working of the human mind grows, we shall probably find it increasingly difficult to distinguish between passionate and premeditated crimes; those which appear "cold-blooded" may in fact result from abnormal impulses which, although present in the mind over a period of time, may have clouded the judgment and thwarted rational decision to such a degree that the crimes can hardly be described as premeditated.\* A true understanding of the springs of human conduct would probably show that a very small percentage of murders are truly thought out and premeditated, and even this small number are perpetrated by abnormal persons so convinced of their ability to escape detection as to rule out all thought of

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\* See below, chapter VIII.

consequences. The large majority of murders are committed under the domination of violent passion, when the murderer is quite incapable of considering consequences. In neither instance will the murderer be deterred from his crime by fear of what may follow, since he either cannot or does not consider what those consequences to himself are likely to be. Only in some such way as this can the failure of the Death Penalty to prevent murder be explained.

In the case of the small percentage of murders which are undoubtedly premeditated, another factor must enter into our consideration. If a crime *is* carefully thought out and its consequences considered, the success of any deterrent punishment will depend upon its *certainty*. Lord Darling has told us that: Certainty of retribution for ordinary crimes is, in my opinion, more useful than mere severity of punishment,\*

and Sir Arthur Wills (late Justice of the High Court) has also laid it down that:

The greater the uncertainty of punishment, the less its deterrent effect.

This principle is true of all punishment. If the reader wishes to test the accuracy of the statement, let

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\* *Musings on Murder*, by Rt. Hon. Lord Darling. J. A. Allen and Co. 1925, p. 8.

him threaten a small boy with dire consequences for a particular offence, allow the child to repeat his offence a number of times without inflicting the penalty, and then judge what value his threatened punishment will have.

In the light of this principle, the deterrent value of Capital Punishment needs to be judged by the degree of certainty by which it follows the perpetration of the crime. The following Official Returns\* indicate that only in a small percentage of those murders known to the police is the Death Penalty actually inflicted.

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\* Furnished by the Home Office, 1925.

STATEMENT OF MURDERS KNOWN TO POLICE, NUMBER OF PERSONS PROCEEDED AGAINST FOR MURDER, THE NUMBER OF PERSONS CONVICTED OF MURDER, THE NUMBER OF THE LATTER WHO WERE EXECUTED, AND THE NUMBER OF CRIMES OF MURDER IN WHICH THE SUPPOSED MURDERER COMMITTED SUICIDE AFTER COMMITTING THE CRIME, DURING EACH OF THE YEARS 1909 TO 1923.

Year.	Murders known to Police.	Persons proceeded against for Murder.	Persons convicted of Murder.	Number of those shown in Col. 4 who were executed.	Number of crimes in which the supposed murderer committed suicide.
(1)	(2)	(3)	(4)	(5)	(6)
1909	161	115	31	18	24
1910	148	94	28	16	28
1911	144	110	31	16	19
1912	152	89	25	13	37
1913	178	102	28	16	39
1914	141	77	23	14	44
1915	130	76	20	10	} not available
1916	146	89	15	7	
1917	127	83	16	9	
1918	131	93	24	10	34
1919	176	141	25	12	21
1920	179	131	36	21	27
1921	138	74	15	5	35
1922	145	81	35	21	27
1923	150	87	21	11	31

NOTES.—(a) Col. 4 does not include persons found “Guilty, but Insane.”

(b) The figures in Cols. 3, 4 and 6 do not necessarily refer to the same crimes as are shown in Col. 2 for the year named.

(c) Where two or more murders were committed by one person they are separately shown in Col. 2. In many of these cases the murderer committed suicide.

It will be seen from the above table that during the five pre-war years 1909-1913, 783 murders were known to the police, in 147 cases the supposed murderer committed suicide and only 79 persons were executed ; in the five post-war years 1919-1923, 788 murders were known to the police, 141 supposed murderers committed suicide and 70 persons were executed. If a murderer, therefore, not taking his own life, contemplated the possible consequences of his crime, he would discover that he had over seven chances out of eight of escaping the Death Penalty.\*

In 1922 the Home Office issued another return, indicating the position in more detail for the years 1912, 1913, 1920 and 1921.† The following table, which has been prepared by combining the information given in this and the preceding return, shows that in some cases no arrests were made at all, and of the 313 persons arrested, 64 were subsequently acquitted or discharged, and of the remainder only 55 or 22 per cent. were actually executed. A guilty person, therefore, even if arrested, had four chances

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\* The cases of suicide have in fairness been subtracted in calculating this ratio.

† These are the only years for which this complete information is available. The choice of years is that of the Home Office. The exclusion, by the Home Office, of infanticide and deaths from illegal operations accounts for the discrepancy between this and the preceding return.



out of five of escaping the Death Penalty, whereas in 67 cases the real murderer escaped arrest altogether.

RETURN OF NUMBER OF CASES OF SUPPOSED MURDER IN ENGLAND AND WALES IN 1912, 1913, 1920 AND 1921 (EXCLUDING CASES OF INFANTICIDE OF CHILDREN UNDER ONE YEAR BY MOTHERS, AND DEATHS FROM ILLEGAL OPERATIONS).

CASES.	1912	1913	1920	1921	Total
Cases of supposed murder known to the police	98	100	107	85	390
Cases in which the supposed murderer committed suicide . . .	16	25	20	22	83
Cases in which arrests were made. (In 48 of these cases person or persons subsequently discharged or acquitted)	78	74	80	56	288
Cases in which no arrests were made . . .	4	1	7	7	19
Cases in which person or persons arrested were subsequently discharged or acquitted .	Not available separately for each year				48
Cases in which person or persons arrested were dealt with other than by discharge or acquittal . . . .					240
	Ditto				

PERSONS.	1912	1913	1920	1921	Total
Persons arrested . . .	84	79	91	59	313
Persons detained during His Majesty's pleasure	19	18	22	17	76
Persons convicted of other lesser offences .	27	19	13	15	74
Extradited, etc. . . .	0	3	2	0	5
Discharged . . . . .	12	12	26	14	64
Sentenced to death . .	26	27	28	13	94
Executed . . . . .	13	16	21	5	55

These various considerations support the view that Capital Punishment is futile as a deterrent. Confirmation lies ready to our hand in the experience of the countries which have already dispensed with it.

## SUMMARY OF CHAPTER II

*Most murders are passionate crimes committed when the person is incapable of considering consequences ; the few murders which appear premeditated are committed by persons, so confident of their ability to escape detection, as never to consider the consequences. In neither case is Capital Punishment likely to prove an effective deterrent.*

*The comparative infrequency with which the Death Penalty is inflicted, is an additional argument against its deterrent value.*



CHAPTER III  
THE POSITION IN OTHER COUNTRIES

Reason is on our side, feeling is on our side, and experience is on our side. In those States where punishment by death is abolished, the mass of capital crime has yearly a progressive decrease. Let this fact have its weight.

VICTOR HUGO.

### CHAPTER III

## THE POSITION IN OTHER COUNTRIES

THOSE who would abolish Capital Punishment are not urging Britain to embark upon a new and hazardous experiment, or traverse uncharted seas, but merely to follow the lead of the many other countries where the Death Penalty has already been dispensed with. We now come to one of the most interesting and important parts of our subject, namely, an investigation into the experience of those countries which have abolished Capital Punishment.

Such an investigation is fraught with many pitfalls. Uniform data for the various countries are not available ; the student cannot consult a comprehensive tabular statement showing the relative murders in each country, for the simple reason that comparable statistics do not exist. Nearly every state has a different way of defining murder, e.g. the French "meutre" is a wider term than our English "murder" and includes manslaughter. In the Scandinavian countries "murder" and "attempted

murder" are considered the same crime, and are tabulated together. In Italy no distinction is made in the statistical records between murder and other kinds of homicide. France excludes infanticide from her homicidal figure, and other countries include it. Germany with curious logic includes the number of legal executions in her statistics for voluntary homicide! Statistics also have a different basis in each country. England founds her homicidal figures upon the number of such crimes known to the police; the Scandinavian figures are based upon the number of persons convicted; some states do not apparently keep accurate statistics at all. The whole problem is thus seen to be an exceedingly intricate one.

Even were statistical difficulties removed, *comparisons between countries* need careful interpretation, since different factors will influence the homicidal record in each case. The culture of each country, its climate and its political situation, all play their part in determining its homicidal rate. A small agricultural country will be found less prone to crimes of violence than another which is largely industrial. The homicidal rate will tend to be higher wherever there is racial antagonism, as in the Southern States of the U.S.A., or in such centres as New York where recent immigrants of mixed nationality are found in largest numbers. The laws of a country and the



efficiency with which they are administered, the facility with which firearms are obtainable or the restrictions placed upon their issue, the use of alcohol, the detection and treatment of the insane and mentally deficient—all these are factors, which play their part, and must be considered, in studying the number of homicides. Sweeping comparisons concerning the murder rates in different countries are unreliable, and generalisations based upon differing punishments, instead of differing cultural and social conditions, are largely invalid.

In the course of our investigation, a study of the homicidal rates of the different countries will be necessary for two purposes. By far the more important of these will be to find some indication of the *trend* of the murder rates in each of the countries where the Death Penalty has been abolished. By this means we shall be able to discover whether deaths by violence have *decreased*, or *increased*, since Capital Punishment has been dispensed with. Homicidal figures with a constant base for each separate country over a reasonably long period of years are all that will be required for this purpose; for most countries such figures are now available. Comparative statistics, or uniformity in the source material as between the various countries, are fortunately not necessary. The other purpose for which a study of

the homicidal figures in the different countries is necessary, will be to obtain some knowledge of the relative culture and ethical standards in the abolitionist and non-abolitionist states. Before turning to the more important of our two purposes, it might be well to dispose of this particular issue. It is frequently said that only those countries where life is held cheaply have dispensed with Capital Punishment; for example, the *Daily Chronicle*\* said :

Thus one may say, looking round the world now and observing the practice of different countries, that those which have abolished capital punishment are not in the main those where human life is specially sacred. Rather they are those like Italy, where life is cheap and homicide an every-day occurrence.

In our subsequent study of the various foreign homicidal records, we shall see that the abolitionist countries represent many widely different national cultures and standards of development. To assert, as does the *Daily Chronicle*, that in the main they are countries "where life is cheap and homicide an everyday occurrence" is absurd. Sufficient comparative data are available as between the various countries to indicate the contrary. The following table is instructive :

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\* March 25th, 1924.

TABLE SHOWING AVERAGE ANNUAL CONVICTIONS FOR MURDER AND ATTEMPTED MURDER, IN PROPORTION TO POPULATION, DURING THE TEN YEARS 1911-1920.\*

Country.	Convictions per 100,000 of Population.
Denmark . . .	.030
Norway . . .	.052
Sweden . . .	.063
England and Wales	.109
Holland . . .	.132

Denmark, Norway, Sweden and Holland are closely allied to England in culture and racial characteristics. None of them inflicts Capital Punishment, and the first three at any rate compare favourably with this country in the respect shown to human life. Unfortunately, comparative statistics are not available on the same basis for other countries. Switzerland, tabulating its deaths by violence by the number of *homicides known to the police* per 100,000 of population, has an average annual rate of 0.18 for the period 1911-1920. The corresponding figure for England and Wales on the same basis for the years 1911-1921 is 0.76—more than four times as high.† Yet in Switzerland the Death Penalty has

\* Compiled from official statistics quoted in Howard League Pamphlet No. 7. For the sake of uniformity the figures quoted from this pamphlet have been reduced throughout this chapter, unless otherwise stated, from a "million" to a "100,000" basis.

† See Lawes' *Man's Judgment of Death*, p. 112. (Putnam) 1925.

been abolished in more than half the Cantons for over forty years, and its infliction is extremely rare in the few which retain it.

Let us now consider in turn the facts about each abolitionist country, as far as they are available, and seek to determine, where possible, the homicidal trend.

In Europe, Capital Punishment has been dispensed with in Austria, Belgium, Denmark, Finland, Holland, Italy,\* Lithuania, Norway, Portugal, Roumania, Sweden, and in most of the Cantons of Switzerland; in America it has been abolished in the Argentine, Brazil, Colombia, Costa Rica, Ecuador, Honduras, Peru, Uruguay, Venezuela, and in eight States in the American Union; in Australia it has been abolished in Queensland. In some of these States the penalty has been formally removed by law from the Statute Book, in others, the penalty, though still legal, has become abrogated by disuse.

Government Bills for the abolition of the Death Penalty are at present before the legislatures of New South Wales and Czecho-Slovakia. France retains Capital Punishment, but in view of repeated mis-statements concerning the actual position in that country, the facts will be given below.

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\* A Bill embodying a limited reintroduction of the Death Penalty passed the Italian chamber in November, 1926. See below, p. 66.

The experience of, and facts about, each of the countries named, in so far as it has been possible to obtain reliable information from official sources, are as follows :

## EUROPE

### *Austria*

Capital Punishment was legally abolished in Austria within a few months of the Revolution in 1918 and now forms no part of the civil administration of justice. It may, however, be inflicted during times of national danger by special tribunals set up by martial law.

Owing to the drastic frontier changes effected by the St. Germain Treaty in 1919 it is impossible accurately to compare criminal statistics of the present Austrian Republic with any known figures for the pre-war Austrian Crownlands. Even were such comparable figures available, the post-war economic conditions of Austria have been so abnormal as to render them invalid for our purpose.

### *Belgium*

Capital Punishment is still on the Statute Book but in fact has been abrogated by disuse. There have been no executions since 1863, the death sentence being invariably commuted to penal servitude. Just after the war, this policy was put to

as severe a test as can be imagined. Some Germans were convicted of the murder of Belgians. Popular feeling was naturally inflamed, but the Minister of Justice, even in this case, refused to avail himself of his statutory rights, and the men were reprieved.

Dr. Liepmann\* reproduces the following table of official figures from Olivecrona: †

NUMBER OF PERSONS CONDEMNED TO DEATH FOR  
MURDER IN BELGIUM DURING EACH OF THE YEARS  
1861 TO 1890.

Year.	Number Condemned to Death.	Year.	Number Condemned to Death.
1861	32	1876	9
1862	19	1877	7
1863	13	1878	12
1864	20	1879	5
1865	11	1880	8
1866	20	1881	9
1867	not available	1882	18
1868	6	1883	4
1869	7	1884	11
1870	11	1885	6
1871	5	1886	6
1872	5	1887	10
1873	7	1888	5
1874	9	1889	12
1875	10	1890	3

\* *Die Todesstrafe*, pp. 54-56. Berlin, 1912.

† *De la Peine de Mort*. 1893.

Dr. Liepmann supplements this table by the following more recent figures obtained from the statistical section of the Belgian Ministry of Justice :

NUMBER OF PERSONS CONVICTED OF MURDER IN  
BELGIUM DURING EACH OF THE YEARS 1898 TO 1910.

Year.	Number Convicted of Murder.	Year.	Number Convicted of Murder.
1898	15	1905	19
1899	20	1906	21
1900	11	1907	19
1901	9	1908	12
1902	15	1909	21
1903	12	1910	18
1904	30		

From the statistics quoted it will be seen that the Belgian conviction figure for murder shows great variation, with, however, a decreasing tendency during the period following the last execution (1863). This decrease in homicidal crime during the fifty years under notice is more marked when it is realised that the population of Belgium increased from 4,782,255 in 1861 to 7,423,784 in 1910.

*Czecho-Slovakia*

There is a new penal code in course of preparation in Czecho-Slovakia, and in the draft it is proposed

that the penalty of death should be abolished and maintained only under Martial Law. This draft will need to be submitted to Parliament, and its final ratification will take some time. The Republic was established in 1918. Since that date the following death sentences have been passed and executions carried out :

STATEMENT SHOWING NUMBER OF PERSONS SENTENCED TO DEATH BY THE CIVIL COURTS IN CZECHO-SLOVAKIA DURING THE YEARS 1919 TO 1925 AND THE NUMBER OF SUCH PERSONS ACTUALLY EXECUTED.\*

Year.	Death Sentences.	Executions.
1919	15	—
1920	26	—
1921	38	1
1922	45	1
1923	36	—
1924	26	—
1925	19	—

*Denmark †*

The Penal Code of 1866—still operative in Denmark—prescribes Capital Punishment for wilful murder, but as there have been no executions since

\* Figures furnished by Czecho-Slovakian Consulate in London.

† For the information relating to Denmark I am again indebted to the Howard League Pamphlet No. 7.



1892, the penalty has become abrogated by disuse. A new draft Penal Code, now being considered (1926) by the legislature, proposes the formal abolition of the penalty.

Dr. Carl Torp,\* who was responsible for drafting the new Penal Code now before the Danish Parliament, states that "All the members of the (Revision) Commission were unanimous in accepting the proposal for the abolition of Capital Punishment."

He further tells us :

That this Bill which abolishes Capital Punishment will be passed practically without opposition, is due primarily to the fact that in Denmark, as in a number of other countries, the abolition (actual or legal) of Capital Punishment has not in any way contributed to an increase in the number of such crimes as were formerly punished by death.

Between 1866 and 1892 only four executions were carried out, the last in 1892. Until 1896 murder, attempted murder and manslaughter were classified together in the Danish Criminal Statistics. From 1897 figures for murder and attempted murder (which are considered the same crime) are available apart from those of manslaughter. The following tables have been furnished from official sources by Herr Torp :

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\* Professor of Penal Law at the University of Copenhagen.

AVERAGE ANNUAL CONVICTIONS FOR MURDER,  
ATTEMPTED MURDER AND MANSLAUGHTER IN  
DENMARK DURING DECADES 1881 TO 1920.

Decade.	Per 100,000 of Population.
1881-1890	.42
1891-1900	.28
1901-1910	.33
1911-1920	.32

AVERAGE ANNUAL CONVICTIONS FOR MURDER AND  
ATTEMPTED MURDER IN DENMARK DURING YEARS  
1897 TO 1920.

Period.	Per 100,000 of Population.
1897-1900	.025
1901-1910	.060
1911-1920	.030

From these figures, to quote Herr Torp again :

It may be considered proved that the abolition of this Punishment has not had any adverse influence on the number of Capital crimes.

*Finland*

Under the Criminal Law, Capital Punishment may be inflicted for certain crimes, but from 1826 there have been no executions except under martial law during a revolutionary rising in 1918. "Since 1918," writes the Secretary of the Finnish Legation in London,\*

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\* In a letter quoted, Bowen Rowlands, *op. cit.*, p. 204.

no more executions have been carried out, and though Capital Punishment remains in force according to the Finnish law, the old practice will be observed, and the penalty of death will not be carried out. No general demand has been forthcoming for the re-introduction of the Capital Punishment.

### *France*

It is frequently asserted that France abolished the Death Penalty and subsequently re-introduced it. This is not true. A recent inquiry at the French Embassy was met by the emphatic reply that "La peine de mort n'a jamais été abolie en France."\* What actually happened was that on two occasions, once during the Presidency of M. Grévy (1879-1887) and again during the years 1906-1908, under M. Fallières' Presidency, a liberal use was made of the President's prerogative of mercy. The relative statistics are furnished on the following schedule :

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\* Letter to Howard League for Penal Reform. 1924.

TABLE SHOWING NUMBER OF PERSONS CONVICTED OF  
HOMICIDE, SENTENCED TO DEATH, AND EXECUTED  
IN FRANCE DURING THE YEARS 1870-1922.\*

Year.	President.	Convicted.	Sentenced to Death.	Executed.
1870	M. Thièrs	460	11	5
1871		629	15	10
1872		592	27	24
1873		618	32	15
1874		559	31	13
1875	M. Grévy	597	32	12
1876		652	22	8
1877		559	30	12
1878		588	28	7
1879		543	22	4
1880		539	22	2
1881		557	19	1
1882		581	33	4
1883		560	25	3
1884		610	30	7
1885	M. Carnot	593	39	12
1886		556	36	10
1887		570	27	6
1888		560	27	9
1889		543	27	9
1890		538	30	7
1891		522	28	15
1892		530	27	9
1893		554	37	15

\* Statistics obtained from *Compte général de l'Administration de la Justice Criminelle en France*, and supplemented by recent figures from the French Ministry of Justice.

Year.	President.	Convicted.	Sentenced to Death.	Executed.
1894	M. Périet	573	28	14
1895	M. Faure	493	22	7
1896		498	23	6
1897		440	14	4
1898		483	19	10
1899	M. Loubet	424	20	6
1900		491	11	1
1901		406	20	3
1902		429	9	1
1903		461	15	1
1904		455	16	1
1905		559	18	4
1906	M. Fallières	585	29	—
1907		627	41	—
1908		569	43	—
1909		429	19	14
1910		514	28	10
1911		532	30	8
1912		572	35	9
1913	M. Poincaré	558	24	10
1914)	War-time figures not available			
1915)				
1916)				
1917)				
1918)				
1919	M. Millerand*	391	17	5
1920		744	56	13
1921		713	64	20
1922		571	42	16

\* M. Deschanel was President for a few months only.

In a recent newspaper article subsequently re-published,\* Lord Darling has told us that:

M. Grévy, when President of France, commuted every sentence of death, with the result that murders multiplied beyond measure and it was made most difficult to revert to the former salutary practice.

Unfortunately for Lord Darling, the figures tell a different story: in no single year of M. Grévy's Presidency were there no executions, and far from there being an increase in deaths by violence, there were only 5,109 persons convicted of homicide during the nine years of his Presidency, as compared with 5,254 persons so convicted during the nine years immediately preceding that period.

During M. Fallières' Presidency there actually *were* three years during which no execution took place, viz.: 1906-1908, though curiously enough Lord Darling makes no mention of this fact. At first glance at the relative figures for this period it might seem that a case could be made out for the deterrent effect of executions, since the three years during which no executions took place coincided with an increase in convictions, which decreased again in 1909 when the Death Penalty was re-imposed. A more careful analysis, however, does not

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\* *Musings on Murder, etc., op. cit., p. 11.*

support this view. The French homicidal figure is not static but varies greatly from year to year. If the number of convictions fell in 1909, it is also true that from that date they steadily increased again, although with one exception more persons were then being executed than in any period during the preceding thirty years. If the Death Penalty *were* responsible for the fall in 1909 it is pertinent to ask whether it was also responsible for the steady *increase* in murder during 1910 and the years that followed! Surely the correct inference to draw from an examination of these figures is frankly to say they are inconclusive.\* In statistics where the uncertain human factor comes in, true deductions can only be drawn from those countries where the experiment covers a considerable period of years. And there, as will be seen, the evidence is overwhelmingly against the assertion that the abolition of Capital Punishment leads to an increase in murder.

One further fact concerning the French figures should be noted. There is an apparent *increase* in the percentage of death sentences in proportion to convictions during the period when the former

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\* For a more exhaustive treatment of the French position see pamphlet *Commonsense and Capital Punishment*, by J. W. Hall, M.A., B.C.L. (Howard League for Penal Reform). 1927.

were not carried out and a subsequent *decrease* immediately the Death Penalty is re-inflicted. This seems to confirm a growing conclusion that the Death Penalty no longer has the support of a considerable section of the community, since when enforced, juries hesitate to convict.\*

### *Holland*

Capital Punishment was abolished by law in Holland in 1870, but only two executions had taken place in the twenty years prior to that date. Penal servitude is substituted in its stead, and the Dutch Court has an absolute discretion as to the length of sentence pronounced within the limits fixed by law, i.e. from one day to lifelong imprisonment. Life sentences are passed in only the most serious cases ; when extreme provocation is proved, the sentence may be a short one.

The relative statistics for murder and attempted murder (which are tabulated together in Holland) since 1851, are as follows :

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\* See below, chapter VII.



AVERAGE ANNUAL CONVICTIONS FOR MURDER AND  
ATTEMPTED MURDER IN HOLLAND PER 100,000 OF  
POPULATION.\*

Period.	Per 100,000 of Population.	Notes.
1851-1855	.11	Last executions.
1856-1860	.06	
1861-1865	.13	C.P. abolished 1870.
1866-1870	.08	
1871-1875	.07	(From 1851 to 1895 the population fig- ures used in calcula- tion are only com- puted from census figures.)
1876-1880	.08	
1881-1885	.09	
1886-1890	.13	
1891-1895	.15	
1896-1900	.11	
1901-1905	.11	
1906-1910	.14	
1911-1915	.16	
1916-1920	.10	
1921	.12	
1922	.07	

It will be seen from this table that the average number of convictions for murder and attempted murder per 100,000 of population for the twenty years immediately before and after 1870 (i.e. the year in which Capital Punishment was legally abolished) was exactly .09. Since 1890 this figure has slightly increased, and for the thirty years

\* Quoted from Howard League Pamphlet No. 7.

ending 1920 stood at .13. It dropped, however, to .11 in 1921 and .07 in 1922. The increase in convictions during 1891-1920 is difficult to explain, but the steadiness of the figure during the twenty years before and after abolition indicates that the removal of the Death Penalty effected no change.

The following are extracts from a report\* on the Dutch position furnished to the Howard League for Penal Reform in 1925 by Prof. Dr. J. Simon Van der Aa (Professor of Penal Law and Secretary to the International Prison Congress) :

The existing law in Holland places upon the judges a grave responsibility for the public safety in leaving to their discretion the length of sentence ; and the great drop in life sentences since the period 1871-1875 would seem to indicate that they shew increasing care in the exercise of this duty.

[Records] dispose of the idea that where life sentences are afterwards reduced the prisoner may have proved a fresh danger to society.

The numbers [of life sentences] are so small that no heavy burden is imposed upon the community.

The question of the reintroduction of the death penalty was raised again when the Dutch Penal Code, introduced in 1886, was before Parliament. The Government, however, did not propose its reintroduction, and an amendment in its favour was rejected by Parliament. Since then, from time to

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\* See Howard League Pamphlet No. 7.

time, voices have made themselves heard both inside and outside Parliament for reinstitution of Capital Punishment but the basis of such agitation has been not so much any allegation that its abolition would have an effect in increasing crime, as the tenets of a certain (political) group of pronounced Calvinistic character which holds the punishment of murder by death to be a divine ordinance. There are, however, recently signs of a relaxation of this extreme view amongst those who have hitherto held it.

### *Italy*

Capital Punishment was legally abolished in 1889 but prior to that date there were no executions after 1877. The penalty substituted is a horrible one which, it is hoped, would not be tolerated in England, viz. imprisonment for life with the first seven years in solitary confinement. Official statistics of the average annual homicidal rates from 1880-1920, furnished by the Italian Ministry of Justice to the American Consul-General at Rome\* are as follows :

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\* Quoted Lawes, *op. cit.*, p. 109.

TABLE SHOWING ANNUAL NUMBER OF HOMICIDES IN ITALY PER 100,000 OF POPULATION DURING YEARS 1880-1920.

Period.	Average annual number per 100,000 of Population.
1880-1884	10.64
1885-1889	9.23
1890-1894	7.78
1895-1899	7.43
1900-1904	5.62
1905-1909	5.05
1910-1912	3.93
1913-1915	4.04
1916-1918	3.14
1919	2.75
1920	3.48

The Italian homicidal rate is relatively high compared with that of other countries. It is all the more remarkable, therefore, that a marked and steady decrease in homicidal crime characterises the thirty years immediately following the abolition of Capital Punishment. Mr. Lawes\* quotes a letter from the Italian Ministry of Justice stating that no increase in homicidal crime has been noticed since Capital Punishment was abolished, a fact obvious from the figures quoted!

In November, 1926, following attacks upon the

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\* *Op. cit.*, p. 76.

life of Signor Mussolini, a Bill was passed by the Italian Chamber reintroducing Capital Punishment in Italy for attempts against the life of the King and his chief Minister. This step, which registers a stage in the present political conflict in Italy, does not in any way invalidate the striking testimony of the above figures, that the abolition of the Death Penalty has been accompanied by a steady decrease in homicidal crime.

*Lithuania.\**

The Death Penalty was abolished, except under martial law, in Lithuania under the State Constitution adopted by the Constituent Assembly on August 1st, 1922.

In 1926, The Seimas (Parliament) adopted a Bill for the abolition of Martial Law, and the Death Penalty can therefore no longer be imposed even by Military Courts.

*Norway.*

Capital Punishment was abolished by the new Civil Penal Law which came into force on January 1st, 1905. There had been, however, no executions for thirty years prior to that date.

In Norway statistics for murder and attempted murder are tabulated together. The following table

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\* Information furnished by the Lithuanian Consulate in London.

indicates the relative convictions during the period when (1) the Death Penalty was inflicted, (2) it was abrogated by disuse, and (3) after it had been finally abolished :

TABLE SHOWING AVERAGE ANNUAL CONVICTIONS FOR MURDER AND ATTEMPTED MURDER IN NORWAY DURING THE YEARS 1859-1924 PER 100,000 OF POPULATION.

Period.	Per 100,000 per annum.	Notes.
1859-1868	.17	Last executions 1875.
1869-1878	.14	
1879-1888	.12	
1889-1898	.12	Capital Punishment abolished 1905.
1899-1904	.08	
1905-1924*	.05	

These figures indicate that the diminution of Capital Punishment and its final abolition, so far from leading to an increase in murder, were accompanied by a marked decrease.

The following extracts from an article† by the late Mons. F. Woxen, *Chef de l'Administration Générale des Prisons*, Norway, authoritatively confirm this :

The last death sentences carried out were pronounced in the year 1875. In the years 1859-1875,

\* Owing to change in method of collecting statistics, separate figures are not available for these years.

† See Howard League Pamphlet No. 7, *op. cit.*

2.7 persons on an average were sentenced for murder, and in the years 1876-1904, 2.4.\* Thus the number of murders did not increase during the period when the Death Penalty was only rarely pronounced and never carried out.

Since the year 1905, Norwegian criminal statistics have not distinguished between murder and manslaughter. I have, however, collected information from our prisons regarding the number of persons confined there for murder [or attempted murder] committed in the years 1905-1924. The total number is 26 or 1.3 per annum. The number of murders has thus further diminished considerably during those years.

Mons. Woxen further comments as follows :

According to the existing laws, persons who are condemned for murder can be sentenced to imprisonment for life or to imprisonment for a period not exceeding fifteen years. Prisoners who are sentenced to a definite period may be released conditionally after serving two-thirds of their sentence, i.e. after not more than ten years spent in prison, unless special circumstances render release inadvisable or the prisoner not deserving of the same. . . . Prisoners who are sentenced to imprisonment for life can be released conditionally after twenty years. . . . It frequently happens, however, that prisoners sentenced for murder are

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\* The figures quoted in this and the following paragraph are actual and not calculated on a population basis.

released by pardon before the expiry of the said periods. In the few cases where any further offences have been committed by released murderers they have been of a minor character.

As the number of murderers in prison is very small—at the present time (1925) there are only five—the burden which they place on the community is of no essential importance.

### *Portugal*

Capital Punishment was abolished in Portugal in 1867. In an official report dated 1880, the Minister of Justice states :

Facts confirm the marked decrease of crimes which before 1867 were punished by death.\*

### *Roumania*

Capital Punishment was abolished in 1865. The number of persons convicted for homicide during the years 1864-1907 is shown in the following table. Figures for the years subsequent to 1907 are not readily obtainable. Those quoted are, however, sufficiently informative to render unnecessary the additional trouble to the authorities which further inquiries would entail.

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\* Quoted Liepmann, *Die Todesstrafe*, p. 52. Berlin, 1912.



NUMBER OF PERSONS (EXCLUDING MINORS) CONVICTED OF HOMICIDE IN ROUMANIA DURING THE YEARS 1864-1907.\*

Year.	Number of persons convicted.	Year.	Number of persons convicted.
1864	204	1890	165
1865	Records destroyed when to Ministry of Justice was destroyed by fire.	1891	190
1875		1892	255
1876		1893	214
1876	249	1894	191
1877	186	1895	179
1878	131	1896	147
1879	180	1897	191
1880	207	1898	145
1881	210	1899	150
1882	161	1900	178
1883	189	1901	163
1884	203	1902	160
1885	131	1903	225
1886	137	1904	185
1887	186	1905	214
1888	238	1906	193
1889	218	1907	168

From the above statistics it will be seen that the Roumanian homicidal figure is not constant but, nevertheless, indicates a declining tendency. This

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\* Obtained from Roumanian Ministry of Justice and quoted by Dr. M. Liepmann, *op. cit.*, pp. 51-52. Prior to 1878, though a self-governing Principality, Roumania had not regained her complete independence.

decrease is much more marked when the figures are calculated on a population basis, since the population of Roumania increased from 4,446,165 in 1876 to 6,684,265 in 1907.

### *Sweden*

Capital Punishment was formally abolished in Sweden in 1921 except under martial law in time of national danger. Since 1865 the Judge has been empowered to substitute penal servitude for life for the Death Penalty, and only fifteen executions have taken place since that date. The last was in 1910. Since 1865, and prior to abolition, decapitation for civil, and shooting for military, offences were the accepted methods of execution.

The following table indicates the average annual number of persons convicted for homicidal crimes since 1846:

TABLE\* SHOWING AVERAGE ANNUAL NUMBER OF PERSONS CONVICTED OF MURDER AND ATTEMPTED MURDER IN SWEDEN, AND PERSONS EXECUTED DURING THE YEARS 1846-1923.

Period.	Convicted per 100,000 per annum.	Persons executed during period	Notes.
1846-1850	.38	21	Public execu- tions abol- ished, 1877
1851-1855	.47	41	
1856-1865	not available	42	
1866-1870		2	
1871-1875	.31	1	
1876-1890	not available	7	
1891-1895	.23	1	
1896-1905	not available	3	
1906-1910	.07	1	
1911-1915	.07		
1916-1920	.06		C.P. abolished 1921
1921	.18		
1922	.05		
1923	.07		

An examination of this table indicates that the reduction in the number of persons executed and the final abolition of the penalty were accompanied by a steady decrease in convictions.

The following extracts are from a report drawn up by Mons. Victor Almquist, *Chef de l'Administration Pénitentiaire* in Sweden :

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\* See Howard League Pamphlet No. 7, *op. cit.*

In the period 1840-1860 the number of executions annually was about .20 per 100,000 of population. In the early sixties they decreased to .07 per 100,000, and after the introduction of the new penal code of 1864 death sentences became fewer and fewer, the tribunals generally preferring to give penal servitude for life. Between 1865-1889 the death sentence was only pronounced in one-fourth of the cases, from 1890-1912 in one-fifth of the cases where Capital Punishment was an alternative. Executions became more and more rare and ceased entirely in 1910 when the last execution took place.

The reduction in the number of capital sentences and the final abolition of the penalty so far from leading to an increase in offences of this kind was actually followed by a noticeable decrease in crimes legally punishable by death.

No active demand has been made for the restoration of the death penalty since the last execution by decapitation in 1910.\*

#### *Switzerland*

Capital Punishment was abolished by the Federal Constitution of 1874, though cantons retained liberty of action. Fifteen cantons, representing 75 per cent. of the total population of Switzerland, have not reimposed it. In the remaining ten cantons there have only been seven executions during the last forty years.

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\* Howard League Pamphlet No. 7. See also footnote, p. 49.

The Swiss figures are interesting both for the fact that here we may see abolition and non-abolition cantons working side by side, and also because Switzerland has what is probably the lowest homicidal rate in the world.\* The average annual homicidal rates per 100,000 of population for the ten cantons which retain Capital Punishment for the ten years ending 1890, 1900, 1910, 1920, were .25, .23, .24 and .15 respectively. The corresponding rates for the fifteen cantons which have abolished the Death Penalty were .28, .24, .18 and .16.†

It is clear from these figures that a difference in the penalty has not interfered with a steady decrease in homicidal crime in each case.

In the cantons which retain Capital Punishment, there is no official executioner. In 1924 a man was sentenced to death in the canton of Uri. Out of those who applied for the grim office, the Government of Uri selected a railway official. His Trade Union objected and excluded him from its membership! The Director of the Federal Railway, therefore, forbade his acting as executioner. The question of the Director's competence to take this step was actively discussed, until the Government of the

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\* See above, p. 49.

† Figures taken from table furnished by the Swiss Federal Department of Justice and quoted by Lawes, *op. cit.*, p. 110.

canton avoided pressing the matter to a decision by making another appointment.

## AMERICA

### *The Argentine*

Capital Punishment has not existed in the Argentine Penal Code since April 29th, 1922, on which date the new national Penal Code sanctioned by Congress under Law 11179 was put into force.

*London Consul-General, October 15th, 1926.*

### *Brazil*

Capital Punishment was abolished in 1891. The crimes for which, in the days of the Empire, there was the death sentence, are now punished by penal servitude for thirty years.\*

### *Colombia*

Capital Punishment was abolished in Colombia on October 31st, 1910.—*Extract from letter dated June 23rd, 1926, from London Consul-General.*

### *Costa Rica*

Capital Punishment has been abolished for many years in Costa Rica.—*London Consul-General, September 2nd, 1926.*

### *Ecuador*

Capital Punishment was abolished in 1895 and the present constitution, sanctioned in 1907, corro-

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\* Quoted Bowen Rowlands, *op. cit.*, p. 200.

borates the same principle. The maximum penalty in the penal code is sixteen years' imprisonment.

*London Consul-General, September 28th, 1926.*

*Honduras*

The Death Penalty is not used.\*

*Peru*

Capital Punishment has been discontinued in Peru for thirty years or more.—*Extract from letter dated September 2nd, 1926, from Consulate-General in London.*

*United States of America.*

The Death Penalty has been abolished in the following eight States:†

*Michigan*.—Abolished in 1847.

*Rhode Island*.—Abolished in 1852.

*Wisconsin*.—Abolished in 1853.

*Maine*.—Abolished in 1876. Re-enacted for murder in 1882. Finally abolished in 1887. In 1885, the Governor in his message stated that "there has been an unusual number of cold-blooded murders within the State within the two years last past" (i.e. during the period in which Capital Punishment was in operation). Two years later the Death Penalty was finally abolished.

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\* *Op cit.*, p. 201.

† Two of these States, viz. North Dakota and Rhode Island, retain the Death Penalty for murder committed by a convict serving a life sentence, but there have been no executions under this law.

*Kansas*.—Abolished in 1907. There has, however, never been a legal execution in Kansas, every Governor in turn having refused to sign the necessary warrant.

*Minnesota*.—Abolished in 1911.

*North Dakota*.—Abolished in 1915.

*South Dakota*.—Abolished in 1915.

In the following seven States the Death Penalty is retained absolutely :

Vermont.

Massachusetts.

Connecticut.

New York.

Florida.

North Carolina.

New Mexico.

In the remaining thirty-three States the Court has power to pronounce an alternative sentence of life imprisonment, and experience shows that advantage is taken of this in most cases.

In fifteen States where the choice is permitted and for which statistics are available, during the eight years 1912-1919 inclusive, there were 1,724 persons sentenced either to death or to life imprisonment. Of these, 272 received the death penalty, while 1,452 were sentenced to life imprisonment. In the five States where the Death Penalty is absolutely retained, during the same



period, there were 263 sentences to death and 454 sentences to life imprisonment. Of course, not in all these cases in the first group was there a direct choice; in both groups many of the sentences to life imprisonment represent conviction for murder in the second degree. But the difference in the ratios is sufficiently impressive to indicate how rarely the death sentence is imposed when there is any opportunity for choice.\*

Four of those States which now have a choice of punishment, viz. Missouri, Washington, Oregon, and Arizona, for a short time abolished the Death Penalty altogether. Their re-adoption of Capital Punishment occurred immediately after the war and was probably due in part to its influence, and in part to the swing of party politics. Mr. Lawes says :†

The period of abolition in each case was too short to have presented a fair test; it appears from such data as I have been able to gather that the restoration of the Death Penalty had no great effect as a deterrent, and further that no noticeable increase in homicidal crime occurred during the abolition period.

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\* Lawes, *op. cit.*, p. 25. These details refer to the States in the Registration Area only, see pages 80-81. In the U.S.A. there is gradation of murder, i.e. murder can be of the first or second degree; those States which retain the Death Penalty absolutely reserve it for murder in the first degree only.

† *Op. cit.*, p. 23.

We have already seen that many different factors determine the homicidal rate,\* and conditions vary so much in the different States of the Union that we shall expect to find great variation in the number of murders. Statistics are only available for the twenty-six States included in what is known as the Registration Area, and the homicidal figures for these States are shown in the following table.

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\* See above, pages 46-47.

TABLE\* SHOWING THE AVERAGE ANNUAL NUMBER OF HOMICIDES PER 100,000 OF POPULATION IN THE TWENTY-SIX STATES OF THE AMERICAN REGISTRATION AREA, DURING THE EIGHT YEARS 1912-1919.

State.	Homicidal rate per 100,000 of population.
Maine ... ( <i>Abolition</i> )	1.80
New Hampshire ...	1.97
Vermont ... ..	1.97
Wisconsin ( <i>Abolition</i> )	2.33
Massachusetts ... ..	2.98
Minnesota ( <i>Abolition</i> )	3.29
Rhode Island ( <i>Abolition</i> )	3.30
Michigan ( <i>Abolition</i> )	3.70
Connecticut ... ..	3.76
Oregon ... ..	4.45
New Jersey ... ..	4.52
New York ... ..	4.63
Indiana ... ..	5.31
Pennsylvania ... ..	5.66
Maryland ... ..	5.78
Kansas ... ( <i>Abolition</i> )	6.70
Utah ... ..	6.76
Washington ... ..	6.91
Ohio ... ..	7.00
Illinois (Years 1918-19 only)	7.50
Delaware (Year 1919 only)	7.70
Virginia ... ..	10.90
Kentucky ... ..	11.30
California ... ..	11.60
South Carolina (1916-19 only)	12.20
Montana ... ..	12.90

\* Lawes, *op. cit.*, p. 95.

It will be seen from this table that the State with the least deaths by violence is Maine, where Capital Punishment has been abolished for forty years. Its homicidal rate is 1.80. Four of the next seven States have abolished Capital Punishment; the homicidal rates in this group are all below 3.75. The eight States at the bottom of the list (each with a homicidal rate exceeding 7.00) all retain the Death Penalty.

The following table shows the homicidal rates arranged according to the geographical position of the various States.

AVERAGE ANNUAL NUMBER OF HOMICIDES PER 100,000 OF POPULATION IN THE REGISTRATION AREA OF THE U.S.A., 1912-1921.\*

<i>North Atlantic Division.</i>				
State.				Average rate.
Maine ...	...	(Abolition)	...	1.8
Vermont ...	...	...	...	1.9
New Hampshire ...	...	...	...	1.9
Massachusetts ...	...	...	...	2.9
Rhode Island ...	...	(Abolition)	...	3.1
Connecticut ...	...	...	...	3.7
New Jersey ...	...	...	...	4.5
New York ...	...	...	...	4.7
Pennsylvania ...	...	...	...	5.7

\* The above table is obtained by combining data given by Lawes, *op. cit.*, pp. 101-103, and Raymond Bye, pp. 42-43 (*Capital Punishment in the U.S.A.*). The rates shown for the States in the

<i>North Central Division</i>				
State.				Average rate.
Wisconsin	...	(Abolition)		2.3
Minnesota	...	(Abolition)		3.4
Michigan	...	(Abolition)		4.0
Indiana	...	...	...	5.4
Kansas	...	(Abolition)		6.6
Ohio	...	...	...	7.1
Illinois	...	...	...	7.8
Missouri	...	...	...	9.6
<i>Western Division</i>				
Oregon	...	...	...	5.2
Utah	...	...	...	6.4
Washington	...	...	...	6.6
Colorado	...	...	...	10.5
California	...	...	...	11.3
Montana	...	...	...	11.9
<i>South Atlantic Division</i>				
Maryland	...	...	...	4.3
Virginia	...	...	...	11.9
Kentucky	...	...	...	12.6
North Carolina	...	...	...	16.4

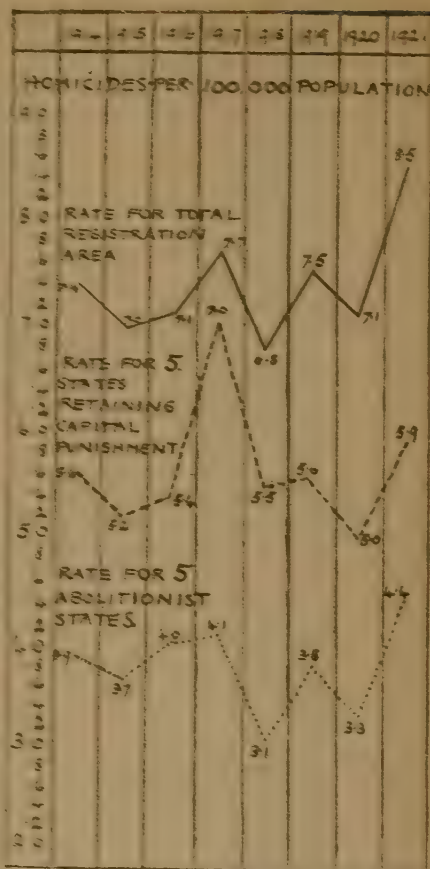
A study of these tables shows quite clearly that the homicidal rates are much higher in the Southern States of the Union where the racial animosity between the white and coloured races is most acute,

South Atlantic Division are for the years 1906-1915, no later figures being available. The slight variation in the rates quoted in this and the preceding table is due to the fact that each covers a different period of years.

and in the large industrial areas where recent immigrants of many different nationalities are found in greatest numbers.

These differences make it impossible to draw conclusions fairly from a comparison between the homicidal rate for the abolition States and that for the whole Registration Area of the Union, which is much higher. To secure a sound basis for comparison,

Mr. Lawes\* takes the combined average homicidal rate for five abolition States, viz. Maine,



\* *Op. cit.*, p. 100.

Rhode Island, Michigan, Kansas, and Minnesota,\* and contrasts with this the combined average rate for five States "comparable in geographical location, character of population and industrial conditions, which have Capital Punishment," viz. New Hampshire, Connecticut, Ohio, Indiana, and Missouri. The resulting graph is instructive.

It is sometimes said that lynchings in the U.S.A. are due to the abolition of Capital Punishment. An examination of the facts soon disposes of this assertion.

During the twenty-eight years 1890-1917, 1,013 persons met their death by lynching in the United States. During the same period there were five States without Capital Punishment. Only twenty-six persons were lynched within the borders of these abolitionist States and the remainder—987—were lynched in the States retaining Capital Punishment.

During a similar period, nine of the fifteen States listed as having the greatest number of executions, were also the States having the largest number of lynchings. Lynchings appear to have occurred with greater frequency where Capital Punishment is

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\* Wisconsin (the only other abolitionist State within the Registration Area) has not been included, though its homicidal rate of 2.33 is low, owing to difficulty in finding a suitable comparable State.

retained and most often inflicted; indeed, there is reason to believe that the brutalising influence of executions increases rather than prevents them.\*

- In the above tables, the abolitionist States compare favourably with those which retain Capital Punishment, in order of lowest homicidal rates. In view of this, the charge often made in this country that the relatively high American homicidal rates, compared with those of other countries, are due to the abolition of the Death Penalty, is untenable. A solution to this problem is to be found in quite other directions. In the first place, it should be clearly understood that homicidal figures include *manslaughter*, and convictions for the latter offence include those for street accidents. A country possessing the greatest number of motor-cars in the world, and with all the other serious traffic problems with which the U.S.A. is confronted, will probably have many more convictions for manslaughter than most other countries. Secondly, no European country possesses the serious racial animosity which is prevalent in the Southern States between the negroes and whites, nor is faced with the grave immigration difficulties of a constant influx of large numbers of persons of vastly differing nationalities

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\* See *Capital Punishment*, by Dr. Clifford Kirkpatrick, pp. 36-39. Philadelphia, 1925.



into large industrial areas. Both these factors seriously increase the homicidal rate.

Reference should also be made to the frequency with which firearms are carried in America, compared with the practice of most other countries. Many murders are due to the use of firearms, and drastic restrictions in their issue would undoubtedly decrease the number of such crimes. Conflicts between the authorities and "bootleggers" arising from violations of the Prohibition laws probably also result in many homicides.

Lastly, faults in the American legal system and inefficiency on the part of the police force in America, result in a very low percentage of convictions for serious crime.\* We have already seen that the first essential in any punishment, to make it deterrent, is its certainty. The relative *uncertainty* of conviction in America, compared with most other countries, is an incentive to crime, and undoubtedly accounts in part for the "crime wave."

These facts should be considered in any study of homicidal crime in America. The abolition of Capital Punishment is only relevant in this connection to the extent to which it would lead to an

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\* Thus, in contrasting English police methods with those of his own country, Mr. Lawes says "the efficiency and accuracy of English police methods are proverbial." *Op. cit.*, p. 39.

increase in convictions, for as Mr. Lawes has told us :\*

There is a somewhat greater facility in obtaining convictions for homicide in abolition States.

Perhaps the operation of this factor is one of the reasons why the abolitionist states in America do occupy such a relatively favourable position among their Capital Punishment neighbours !

### *Uruguay*

Capital Punishment was abolished in Uruguay about twenty-five or thirty years ago.—*Information furnished by the Consul-General in London, September 21st, 1926.*

### *Venezuela*

Capital Punishment was abolished in Venezuela about fifty years ago. The maximum period of prison term that can now be inflicted is twenty years.—*Extract from letter dated September 3rd, 1926, from Consulate-General in London.*

## AUSTRALIA

### *Queensland*

Capital Punishment was legally abolished in Queensland in 1922 under the *Criminal Code Amendment Act* of that year. For some years prior to that date no death sentences were carried out.

Official figures showing the number of persons

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\* Lawes, *op. cit.*, p. 58.

brought to trial for murder during the years 1916-1923 are as follows :

STATEMENT SHOWING NUMBER OF PERSONS BROUGHT TO TRIAL, CONVICTED AND EXECUTED IN THE STATE OF QUEENSLAND, 1916-1923.

Year.	Persons brought to Trial.	Ac-quitted.	No True Bill or Jury dis-agrees.	Found Insane, post-poned, etc.	Convicted.	Executed.
1916	13	7	1	1	4	—
1917	10	6	—	3	1	—
1918	10	1	2	3	4	—
1919	12	1	—	2	9	—
1920	3	—	2	1	nil	—
1921	15	8	3	1	3	—
1922	17	2	5	—	10	C.P.
1923	11	—	5	—	6	abolished 31/7/22

In our earlier examination of the conditions governing the deterrent value of punishment, it was shown how most murders were committed in circumstances which precluded a consideration of consequences, whereas, in the few instances where the murder was premeditated, the relative infrequency with which the capital penalty was inflicted destroyed its effectiveness as a deterrent. It was therefore concluded that murder was one of those crimes against which it is difficult to devise a wholly

successful deterrent, certainty rather than severity must be the criterion of its effectiveness, and the Death Penalty, by its very nature, hindered the achievement of this end. It was, moreover, concluded that murder was far more likely to be prevented by the removal of its fundamental social and psychological causes than by attempting to make people fearful of its consequences. The experience of these other countries we have been considering appears to confirm this view. Countries widely different in geographical situation, in standard of development, and in racial composition, are represented among the abolitionist States. In no single instance has the abolition of the Death Penalty permanently increased the homicidal figure; in most cases its abolition has actually been accompanied by a steady reduction in the crimes for which it was formerly inflicted. If there were people longing to commit murder and only deterred by the fear of Capital Punishment, surely they would have given expression to their desires in these abolitionist countries. If the Death Penalty were really a necessary deterrent, its abolition would inevitably have been followed by an immediate increase in murder; the fact that in no single case has a permanent increase occurred, proves Capital Punishment to be unnecessary.

## SUMMARY OF CHAPTER III

*Capital Punishment has been abolished in a large number of the countries in the world, including some of the most enlightened and law-abiding ones. In no single instance is there evidence of a permanent increase in homicidal crime as a result of abolition; in many there has been a decided decrease. The experience of these countries indicates that the Death Penalty cannot be a necessary deterrent. If other countries find they can get on very well without Capital Punishment, there is no valid reason why Britain should not follow their lead.*

(For particulars of the authorities quoted in this chapter see Bibliography on pages 196-198.)



CHAPTER IV

CAPITAL PUNISHMENT AND PRISONS

Government, a Christian Government, gives us a feast every now and then : it agrees—that is to say—a majority in the two Houses agrees that for certain crimes it is necessary that a man should be hanged by the neck. Government commits the criminal's soul to the mercy of God, stating that here on earth he is to look for no mercy ; keeps him for a fortnight to prepare, provides him with a Clergyman to settle his religious matters (if there be time enough but Government cannot wait) ; the Clergyman reading out the word of God “I am the resurrection and the life,” “The Lord giveth and the Lord taketh away”—on a Monday morning, at eight o'clock, this man is placed under a beam, with a rope connecting it and him ; a plank disappears from under him, and those who have paid for good places may see the hand of the Government agent, Jack Ketch, coming up from his black hole, and seizing the prisoner's legs, and pulling them until he is quite dead—strangled.

. . . . .  
I pray to Almighty God to cause this disgraceful sin to pass from us, and to cleanse our land from blood.

THACKERAY.

I am, and have been for many years, an opponent of capital punishment.

LONGFELLOW.



## CHAPTER IV

### CAPITAL PUNISHMENT AND PRISONS

IN previous chapters consideration has been given to the Death Penalty's failure as a deterrent, and we have seen how other countries have by experience proved it to be unnecessary. Quite apart from its futility, however, there are certain features associated with the penalty itself which make it socially harmful. Chief amongst the many such objections, is the suffering which capital punishment inflicts upon the prison officials upon whom rests the responsibility of carrying it out, and its disastrous effect on the prison population.

Anyone who reflects upon the events of the last century, must realise how degrading a spectacle an execution inevitably must be. It was precisely for this reason that *public* executions were abolished. If the Death Penalty were, as its advocates contend, an effective and salutary deterrent, it follows that the more who witnessed it, the greater would be its wholesome effect; the contrary proved true. Each succeeding public execution became the excuse

for an increasing debauch in brutality which eventually compelled the authorities to abandon the practice.\* But the same grim scene is still enacted within our prisons, to the demoralisation and suffering of their whole population.

In considering this aspect of the subject, it is well for us to realise exactly what an execution is like. It is so easy to talk in the abstract about the Death Penalty being “an ordinance of God,” but face to face with all that it means in actual fact, it is a little more difficult to maintain this belief. The following account of an execution, written some thirty years ago by David C. Murray and published in the *St. James's Gazette*,† is not superficially sensational but a plain description of what actually happened, written by a man who is obviously seeking to make us feel what he felt. It is, moreover, an account of an execution which, in the official

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\* Thus in a leading article on the occasion of the first private execution in England, *The Times* said :—

“We shall not in future have to read how the night before an execution, thousands of the worst characters in England, abandoned women and brutal men, met beneath the gallows to pass the night in drinking and buffoonery, in ruffianly swagger and obscene jests ; how they hooted the hangman or cheered the criminal ; how, at the very foot of the gallows, they committed with impunity, deeds of lawless violence, scarcely less reprehensible than the crime of which they had come to witness the expiation.”

August 14th, 1868.

† August 31st, 1892.

phraseology, was carried out "without a hitch." There *are* more ghastly stories.\*

I shall never forget the spidery, black-painted galleries and staircases, and the white-washed walls of the corridor. I shall never forget the face of the wretched young chaplain who, like myself, found himself face to face with his first encounter with

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\* The Executioner Berry, in *My Experiences as an Executioner*, admits that when he executed Goodale the man's head was jerked right off, and at Conway's execution, although the victim's head was not completely severed the principal blood vessels of the neck were ruptured. Berry also officiated during the notorious incident at Exeter Gaol when three unsuccessful attempts were made to execute a man named Lee whose sentence was subsequently commuted. Andrew Palm in *The Death Penalty* (G. P. Putnam's Sons, 1891) quotes a number of ghastly stories of hangings in America. On one occasion "the rope broke and the body dropped to the ground. The neck was not broken but the shock caused the blood to spurt from the wretched man's ears." While the rope was being adjusted, the man regained consciousness. It was only at the third attempt that the rope held, and then the victim was slowly strangled to death, dying in twelve minutes. On another occasion the man's head was pulled nearly off, hanging "only by a small piece of skin at the back of the neck, and the gasping trunk was exposed in all its horror."

An ex-colonial surgeon tells the following grim story in the *British Medical Journal* of the 19th February, 1927 :—

"Early one morning a few years ago I had to witness the execution of four coloured men in a gaol. As it happened, the executioner was anxious to finish his work as soon as possible in order to catch a train, and the scaffold held two at a time, so they were divided accordingly. When the first pair were hanged it was my duty to determine the fact of death. As a general rule, on auscultation the heart may be heard beating for about ten minutes after the drop, and on this occasion, when the sounds had ceased, there was nothing to suggest any vital spark. The bodies were cut down after fifteen minutes and placed in an anti-chamber, when I was

sudden death, and who, poor soul, had overprimed himself with stimulant. I shall never forget, either, that ghoul of a Calcraft, with his disreputable grey hair, his disreputable undertaker's suit of black, and a million dirty pinpricks which marked every pore of the skin of his face. Calcraft took the business businesslike, and pinioned his man in the cell (with a terror-stricken half-dozen of us looking on) as calmly, to all appearances, as if he had been a tailor fitting on a coat. The chaplain read the Burial Service, or such portion of it as is reserved for these occasions, in a thick and indistinct voice. A bell

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horrified to hear one of the supposed corpses give a gasp and find him making spasmodic respiratory efforts, evidently a prelude to revival. The two bodies were quickly suspended again for a quarter of an hour longer. The executioner, who was thoroughly experienced, had done his part without a hitch, and the drop given was the regulation one according to individual physique. Dislocation of the neck is the ideal aimed at, but, out of all my post-mortem findings, that has proved rather an exception, while in the majority of instances the cause of death was strangulation and asphyxia."

In recent years the authorities have endeavoured to avoid the disclosure of such scenes; the fact, however, that the prison doctor is required to certify whether death is due to suffocation or to the severing of the vertebræ is a sufficient indication that death is not always instantaneous. In an extract from the official Home Office instructions to prison Governors concerning their conduct at the inquests following executions (read at the trial of Major Blake—ex-Governor of Pentonville—at the Old Bailey on December 15th, 1926) it was disclosed that a Governor is forbidden from timing an execution. If pressed for details of this kind, he should say he cannot give them as he did not time the proceedings, but "a very short interval elapsed or some general expression of opinion to the same effect." Why should this information be thus suppressed, unless its publication would, in certain instances, involve horrible revelations?

clanged every half-minute or thereabouts, and it seemed to me as if it had always been ringing, and would always ring. I have the dimmest notion—indeed, to speak the truth, I have no notion at all—as to how the procession formed and how we found ourselves at the foot of the gallows. The doomed man gabbled a prayer under his breath at galloping speed, the words tumbling over one another: “Lord Jesus, have mercy on me, and receive my spirit.” The hapless chaplain read the service. Calcraft bustled ahead. The bell boomed. Hughes came to the foot of the gallows, and I counted mechanically nineteen black steps,\* fresh tarred and sticky. A genial warder clapped him on the shoulder, for all the world as if there had been no mischief in the business. Judging by look and accent, the one man might have invited the other to mount the stairs of a restaurant. “You’ll get up all right,” said the warder. He got up, and they hanged him. Where everything was strange and dreamlike, the oddest thing of all was to see Calcraft take the pinioned fin-like hand of the prisoner, and shake it, when he had drawn the white cap over the face and arranged the rope. He came creaking in new boots down the sticky steps of the gallows, pulled a rope which freed a support which ran on a single wheel in an iron groove, and the man was dead in a second. The white cap fitted close to his face, and the thin white linen took a momentary stain, as if a bag of blackberries had been bruised, and

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\* Since this account was written the execution shed in most prisons has been rebuilt without the steps described.

had suddenly exuded the juice of the fruit. It sagged away a moment later, and assumed its natural hue. I learned from the evening paper, and from the journals of next morning, that the prisoner met his fate with equanimity, and recited a prayer as he approached the scaffold. I think that in that report I bottomed the depths of human stupidity, if such a thing is possible. I had never seen a man afraid before; and, when I found time to think about it, I prayed that I might never see that shameful and awful sight again.

“If only the advocates of Capital Punishment had to carry it out,” the Governor of one of our largest prisons exclaimed on the day following a recent execution, “they would soon change their opinion.” “I feel a bit of a murderer myself,” wrote another prison Governor, after describing the conduct of an execution.\*

Among a large body of men of such widely different rank and training as those staffing our prisons, we must expect to find considerable differences of opinion, but an utterance such as the one just quoted is typical of a growing body of opinion in our prisons to-day. Even among the old type of unimaginative prison officer, there was strong opposition to Capital Punishment, but to-day, when our prisons are becoming increasingly staffed by men

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\* Major Blake, ex-Governor of Pentonville. *Evening News*, October 9th, 1926.



and women who are keen to apply the best penological methods to the treatment of crime, the whole idea of an execution is abhorrent. "Evidence of the bad effect of executions upon the staff is unanimous. 'It upsets everyone,' remarks a Governor, and a Chief Warder and a Medical Officer emphasise its bad effect upon the warders particularly."\*

"I have never seen anyone who had anything to do with the Death Penalty who was not the worse for it," says Dr. James Devon, late Medical Officer of His Majesty's Prison, Glasgow, and a member of the Scottish Prison Commission. "As for the doctor who must be in attendance, it is an outrage on all his professional as well as his personal feelings. . . . There has never (for many years) been any pretence that the executioner's occupation is not a degrading one."†

The cruelty of the death sentence in its effect upon prison officers is movingly expressed in the following conversation recorded by an ex-prisoner and given in evidence before the unofficial Prison System Inquiry Committee of 1919-1921 :

A principal warder told me what a strain it was to have to attend executions of men who had been under his charge for many weeks, men whom he

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\* *English Prisons To-day*, p. 247, Hobhouse and Brockway. Longmans, 1921.

† *The Criminal and the Community*, pp. 169-171. Lane, 1911.

had got to know well, and sometimes almost to love. "For many nights before and after the execution I cannot sleep," he said. "Before it comes, every time I see the man or think of him the thought of what I shall have to do at the execution strikes me. I see him hanging there, whilst I hastily undo the buttons of his jacket and pull open his shirt for the doctor to listen to his heart. After it has taken place I cannot shake the memory of the scene from me. You see, I have sometimes been in daily contact with the man a month or more, and often he has bared his soul to me. Many of these men have occupied quite a warm place in my heart."\*

These are no meaningless words. The former chief warder at Wandsworth prison—Lazell by name—committed suicide in 1924, worried by the memories of the executions he had witnessed. Ellis, the famous executioner, attempted suicide soon after the execution of Mrs. Thompson in 1923. The public executioner in Victoria, Australia, cut his throat rather than officiate at the hanging of a woman.† There have been other incidents of a similar character.

One argument often brought forward when this suffering inflicted upon prison officials is referred to, is that the latter need not choose their vocation unless they desire. It would have been equally logical to oppose the factory legislation of a century

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\* Hobhouse and Brockway, *op. cit.*, p. 248.

† *Observer*, February 24th, 1924.



ago on the ground that the parents and the little children who were then working under such appalling conditions were under no compulsion to do so! There is such a force as economic pressure.\* As far as the warders and wardresses are concerned, however, it would probably not be unfair to state that many of them do not consider the ethics of Capital Punishment until they suddenly find themselves put in charge of a condemned person. Happily, executions are not so frequent as to loom large in the consideration of a man or woman contemplating prison service.

For the more enlightened methods which are being introduced into our prisons to-day we need to call out the devotion of the best men and women of the community. We certainly shall not obtain men of the high standard required if we ask them to participate in such a degrading operation as an execution must be. And we cannot, as individuals, so lightly avoid our social responsibility. Public officials always act as our agents. It is *on our behalf* that they execute a condemned man. Few—even the stoutest upholders of Capital Punishment—would be willing to carry it out. We have no right to ask the paid

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\* Berry, the executioner of a few years ago, stated in his published memoirs that his application for the post was not a pre-conceived plan but he was “simply driven to it by the poverty-stricken condition of his family.” *My Experiences as an Executioner*, p. 17.

officials of our elected representatives, to perform on our behalf what we should have a moral objection to doing ourselves.

It is not only upon the officials of a prison that an execution reacts disastrously, but upon the whole prison population. It blights the already unhealthy atmosphere of a prison and, as the execution day approaches, creates an increasing agony of nervous tension among the other prisoners. The following extract from a statement by an ex-prisoner, given in evidence before the inquiry already referred to, is typical of many accounts of the effect which an execution creates upon the prisoners :

I was in —— prison at the time of an execution of a man named ——, who had murdered his wife and baby. He was detained in hospital for several weeks before trial, and was a subject of excited interest among the prisoners. As the day of the execution approached—the excitement of both warders and prisoners rose. Prisoners mounted to their windows every mealtime when the condemned man went out to exercise under the close escort of two warders. He could be seen from the two wings of the ordinary prison and from one hospital wing. In the evenings the juvenile adults worked on the landing of the hall in which my cell was located. I could hear whispered conversation about the details of the murder and the hanging.\*

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\* Hobhouse and Brockway, *op. cit.*, p. 248.

The following is a further account by an ex-prisoner : \*

"As I lay on my plank bed in a northern gaol one night late in November, there came unusual sounds long after the eight o'clock bell had rung, disturbing the silence of the foggy winter night. The rumbling of van-wheels on the courtyard below, the stepping of horses, the throbbing of a motor engine, the sound of human voices calling to one another. The assizes were in progress and after a long trying day of waiting and suspense, prisoners and warders were driven back to the big prison.

During that week no less than four men were sentenced to death. Any item of news respecting them was very quickly passed round amongst the prisoners, and it soon became known that three had entered appeals against the sentences, whilst the other scorned the idea of doing so. Probably he thought it childish or futile, but in any case apparently he did not wish to prolong the agony.

The days passed slowly on, bringing one man at least near to his end. The three others, having appealed, were re-clothed in the blue uniform, pending the judgment of the Court of Criminal Appeal; they had put off the evil day.

The third week came, accompanied by wintry weather, but this did not prevent certain operations being commenced on a plot of ground behind the prison hospital. From one point in our exercise

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\* *Among the Broad Arrow Men*, pp. 145-152, (abridged). A. & C. Black, Ltd., 1924.

“walk we could see an officer in charge of a couple of Debtors who were busy with spades. When the heap of earth grew large and the grave stood exposed, a canvas screen was erected to hide the whole lot.

The last night came, interminably long and dreadful—how could men sleep when a fellow-prisoner whose features had been familiar to them, was to be hanged at nine in the morning. The Grim Reaper hovered around like a spectre, disturbing each man in his broken slumbers, and eagerly waiting to snatch his victim when the light of day appeared. Then the rising bell, in pitch darkness—for it was December, and not until after breakfast did the faint grey dawn send a dim light through the window bars.

The hour was almost at hand. Down below dressed for the last time in his own clothes, for the convict's suit is discarded when the execution morning arrives, waited the man whose life was to come to a tragic end that morning—the last few minutes, long and terrible. Only those who have been in one of His Majesty's prisons at such a time can know the feeling which is inevitable as the hour approaches—and passes by. Prisoners were restless and nothing but the faint sound of footsteps, as they paced up and down the cells, broke the death-like silence of the morning. To read was out of the question. All prisoners know that caged-animal feeling, five paces there, five paces back—*ad infinitum*.

We could only guess the time for no sound in the prison hall could be heard, then suddenly, the

“damp morning air was pierced by the sound of a bell from the tower which rose above the prison gates. That horrible noise, harsh and discordant, signified that the man who so shortly before had been alive and well was now dead. At minute intervals for twenty minutes, the hateful metallic ring smote our ears; nor was it spared to those whose lives hung in the balance. Had the Appeals of those three men not been pending—that is to say if they had been finally condemned—the bell would not have been tolled.

It was late in the morning before there were any sounds of activity in the prison and then between eleven and twelve, doors were opened and a further exercise party went out, myself among the number; a strange gloominess more repulsive than ever hung over the prison precincts. Quite close to the hospital was a small ante-room out of which we saw emerge a number of men who took our attention at once, for they were dressed in clothes which were unusual to our eyes—civilian every-day attire. They were the jurymen and the door which closed behind them was that of the Mortuary inside which lay on a stone slab, the body with the rope-marked throat and dislocated neck.

In less than a month the proceedings were repeated and to such an extent that during two days three men were hanged. They took the middle-aged man first, leaving the bell untolled and the night which ended the wretched day of his departure was the last night of the two young men. The morning dawned clear but frosty and very cold. The next

day only slightly raised mounds were to be seen on the disfigured surface of the grass. Before many more days went by, heavy snow came, to smooth over in its all-covering whiteness the ghastly mistakes of man.

One might well say what a terrible ordeal to compel the prison population to pass through. One ex-prisoner has compared the three weeks' experience as analogous to the universally condemned horror of the rising water in the Bastille dungeon. If our prisons are really to be reformatory, as the recent experiments at Wakefield Prison and elsewhere indicate the Home Office at last wish them to be, then the provision for their population of such compulsory experiences as executions, will prove fatal to the achievement of that end. As the Editors of the Prison System Inquiry Report already referred to,\* say :

This is not the place to argue whether the Death Penalty is ever justifiable but it is within our province to urge that no man condemned to death should be hanged in prison.

#### SUMMARY OF CHAPTER IV

*Capital Punishment brings intense suffering to the prison officials upon whom rests the responsibility of carrying out the sentence, and has a demoralising influence upon the prison population.*

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\* Hobhouse and Brockway, *op. cit.*, p. 249.

CHAPTER V  
CAPITAL PUNISHMENT, THE PRESS  
AND THE COMMUNITY

A deep reverence for human life is worth more than a thousand executions in the prevention of murder ; and is, in fact, the great security of human life. The law of capital punishment whilst pretending to support this reverence, does in fact tend to destroy it.

JOHN BRIGHT.

Cruel punishments have an inevitable tendency to produce cruelty in the people.

ROMILLY.

That night, too, men whose crimes  
Had cut them off betimes,  
Who lay within the pales  
Of town and country jails  
With the rope groove on them yet,  
Said to the same wind's fret :  
“ What of the world now ? ”

And the blast in its brooding tone  
Returned : “ Men have not shewn  
Since you were stretched, that morning,  
A white cap your adorning,  
More lovely deeds or true  
Through thus neck-knotting you,  
Or that they purer grow,  
Or ever will, I trow !  
No more I know.”

THOMAS HARDY.



## CHAPTER V

### CAPITAL PUNISHMENT, THE PRESS AND THE COMMUNITY

IT is common knowledge that a trial for murder arouses a remarkable public interest, to satisfy which newspapers give wide publicity to all the sordid details of the crime and trial. This morbid Press publicity has a most demoralising effect upon the community, and many weak-minded persons of inadequate self-control are thus enabled to dwell upon the details of horrible crimes with the real danger of repeating them. This unhealthy interest in murder trials is in no small measure due to the death penalty, because of the gladiatorial element which is introduced into them. It is mainly because the accused person is *fighting for his life* that such widespread public excitement is aroused; in a recent article on the *Press and Public Morals*,\* the Editor of the *Westminster Gazette* assured us that this "source of morbid infection could be removed

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\* *Brotherhood World*, January, 1926.

from the minds of the young and old by the abolition of Capital Punishment."

That the Press publicity given to the details of murder trials would continue on its present scale were the Death Penalty abolished is most unlikely. There is only one other kind of legal proceeding which—until recently prohibited by law—received anything like the same degree of publicity, viz. : the divorce case, and this was almost entirely due to an unfortunate public demand for sordid details concerning private sex relationships. With this one exception, there is no parallel to the publicity which a murder trial receives, though many a trial for a lesser offence, such as attempted murder or robbery, may have circumstances connected with it quite as dramatic. In a murder trial it is the fact that the accused person is fighting for his life which creates the wide-spread excitement and morbid interest; and this feature would at once be removed by the abolition of Capital Punishment.

That the extensive publicity which a murder trial receives leads to imitative crime, there can be no question; such cases are probably far more numerous than is supposed. It is significant in this connection that most murders appear to be epidemic, following one after the other in quick rotation after a period comparatively free from

them. Evidence produced at the trial of Ernest Rhodes, who murdered a girl by cutting her throat in London in 1925, indicated that he had followed newspaper reports of the previous murder trials of Mahon and Thorne, had carefully preserved newspaper cuttings about them, and had referred to Thorne as "a hero!"

Murders are sometimes committed by persons on the verge of insanity. A few years ago a young man of twenty-one came excitedly to his fiancée one day and showed her a newspaper report with a lurid illustration of a man shooting his sweetheart, asking her what she thought of it and laughing boisterously at her comments on the affair. Within four days he had murdered his fiancée in a similar way, and was sent to Broadmoor Criminal Lunatic Asylum.\*

It is upon such persons, either of inadequate self-control or verging on insanity, that the sensationalism of a murder trial report has so disastrous an effect, and one is perhaps entitled to suggest that the diminution of newspaper publicity in those countries where Capital Punishment has been abolished, may have been one of the prime factors in reducing the homicidal rate in these countries.

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\* Related by Dr. Sullivan, Medical Superintendent of Broadmoor, in *Crime and Insanity*, pp. 107-108. 1924.

The suggestion has been made that such Press publicity could be restricted by law as the reports of divorce proceedings now are. The problems are not, however, analogous ; one is after all mainly a personal issue, whereas the other is concerned with the protection of society ; and such limitation would be difficult to achieve in a murder trial without making possible the undesirable plea that the accused person was convicted in camera without the safeguard of a completely public trial. The more effective way of reducing such publicity would be to remove its primary cause, namely, the gladiatorial nature of the penalty. With the abolition of Capital Punishment the problem would largely solve itself.

One very pernicious effect of the sensationalism created by newspaper publicity, is the wrongly-placed sympathy often aroused for the murderer. In a neighbourhood where a murder has been committed, there will generally be an immediate and spontaneous outburst of public indignation and horror against the accused person ; at the trial, however—and especially if the prisoner is condemned to death—there will nearly always be a reaction in local opinion, and sympathy will be then largely transferred to the guilty man. The more Press publicity the case receives, the more widespread will this sympathy become. Whatever the extenuating

circumstances explaining the murderer's conduct may be, and however strongly we may emphasise society's duty in treating him in an enlightened and civilised manner, we do right to retain the utmost abhorrence for his crime. The superficial sentimentalism often aroused by the Press, which invests with a romantic halo a person who has been guilty of a degrading and revolting crime, is most unhealthy and much to be deprecated.

There is another aspect of this question which has received far too little attention in previous studies of the subject, and that is the serious effect of this newspaper publicity upon *children*. The following extract from a letter by a Yorkshire schoolmaster, sent shortly after a recent execution in his city, is illustrative of its demoralising influence in this direction :

Executions are discussed by children to an enormous extent. They are frequently quite familiar with all the sordid details which have led to the murder, and follow the trial with great interest. This is small, however, compared with the actual execution. Unfortunately the hour is very badly chosen. The children of England, for the most part, are just assembled at School, gathered together in a large hall for the opening exercises (Scripture). Our own children are assembled at about 8.55 a.m. and the execution, timed for 9 a.m., is the one topic

of conversation. The strain on scholars is intense. All eyes are on the clock and words cannot describe the emotional effect as the large hand travels the last five minutes. Some children turn pale and the general silence can be felt. At nine the silence is broken. One child says: "Do you think it's all over?" Another asks whether I think the clock is fast. The whole experience is never to be forgotten."\*

An emotional strain such as that described in this letter must have a most unhealthy effect upon young children, and is certainly not conducive to the growth of those finer qualities, the encouragement of which should be one of the chief ends of education. If there were no other objection to Capital Punishment, this unhealthy influence which it has on young children is surely enough to condemn it.

There is perhaps no other punishment in our penal code which inflicts such suffering upon quite innocent persons as Capital Punishment. We have already considered the mental strain upon *prison officials*,† and reference has just been made to its unhealthy effect upon *children*. It is only right that we should also realise the intense suffering inflicted by the Death Penalty upon the *relatives of the condemned person*. No one who has been brought into close contact with the relatives of a condemned

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\* Extract from letter to Howard League, April 5th, 1925.

† See chapter IV.

man or woman during the few weeks before the execution, can ever forget the awful agony which these quite innocent persons have to undergo. The local petitions often organised for the reprieve of condemned persons, generally so ineffective and supported so often by such shallow emotionalism, do, nevertheless, serve one good purpose. The sufferings of these innocent relatives of the condemned person are partially relieved by the provision of work and the raising of hope during those awful weeks of suspense.

What of the murderer's victim and his relatives, it will be said ? Such a plea re-echoes the old pagan belief in the need for obtaining blood satisfaction.\* Surely the time has passed when the thought of a second death can mitigate the sorrow of those who are themselves mourning the first. Nothing can atone for their loss. When it came it was sudden ; they were not forced to endure the previous anguish of contemplating it for weeks or even months, as the murderer's friends are compelled to

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\* Thus Homer tells of Achilles, with " his manslaying hands on his comrade's breast," addressing the dead body of Patroklos : " All hail, Patroklos, even in the house of Hades ; for all that I promised thee before am I accomplishing, seeing I have dragged hither Hector to give raw unto dogs to devour, and twelve noble children of the Trojans to slaughter before thy pyre, because of mine anger at thy slaying."—*Iliad*, Book XXIII, p. 450. Lang-Leaf-Myers' translation.



do. Cases indeed are not unknown, in which the relatives of the murdered person have initiated efforts to secure the reprieve of the murderer, because they cannot bear to contemplate another death.\*

### SUMMARY OF CHAPTER V

*The Press publicity accompanying murder trials and executions has a demoralising influence upon a large section of the community and is known to lead to imitative crime. Capital Punishment often encourages a misplaced "sympathy" for the murderer. Executions are discussed by children to a considerable extent with most unhealthy consequences. The capital penalty inflicts intense suffering upon the innocent relatives of the condemned person without in any way alleviating the suffering of the murdered person's friends.*

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\* The verdict in the Stella Maris trial at Maidstone (November 27th, 1926) was received by the widow of the dead man with the words "I am glad that another life has not been lost in this terrible business."—Mrs. Derham, reported in the *Sunday Express*, November 28th, 1926.



CHAPTER VI  
CAPITAL PUNISHMENT AND ERRORS  
OF JUSTICE

It is not sufficiently considered that a jury or a court of justice never know that a prisoner is guilty. A witness may know it who saw him commit the act, but others cannot know it who depend upon testimony, for testimony can be mistaken or false. All verdicts are founded upon probabilities—probabilities which, though they sometimes approach to certainty, never attain to it. Surely it is a serious thing for one man to destroy another upon grounds short of absolute certainty of his guilt.

DYMOND.

Error is possible in all judgments. In every other case of judicial error, compensation can be made to the injured person. Death admits of no compensation.

JEREMY BENTHAM.

I shall ask for the abolition of capital punishment until I have the infallibility of human judgment demonstrated to me.

LAFAYETTE.

## CHAPTER VI

### CAPITAL PUNISHMENT AND ERRORS OF JUSTICE

A STRONG objection to Capital Punishment is its irrevocability, for there have been proved cases of the conviction of innocent men.

To the general reader such a possibility may seem remote, but investigation shows it to be by no means so. History is full of tragic stories in which innocent people have been condemned. "With the wisest laws, and with the most perfect administration of them, the innocent may sometimes be doomed to suffer the fate of the guilty; for it were vain to hope that from any human institution all error can be excluded."\*

The Adolf Beck case † will be remembered by many as an extraordinary instance of wrongful conviction. Beck was sentenced in 1896 to seven years' penal servitude for a series of robberies from women, was released after five years, and in 1904

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\* Romilly, quoted by Wills, p. 509, *An Essay on the Principles of Circumstantial Evidence*. 1912 edition.

† *The Trial of Adolf Beck*, edited by Eric Watson (Hodge & Co.), 1924; also *Last Studies in Criminology*, by H. B. Irving (Collins), 1923.

re-arrested and again convicted for further offences of a similar character. On the first occasion he was identified by no less than ten women, and at the second trial by five women, each of whom swore to his identity as the man who had swindled her; a handwriting expert called by the prosecution at each trial testified on oath that the letters written by the real culprit were in Beck's handwriting; two prison officials wrongly identified Beck as a previously convicted man—Smith—who was afterwards proved to be the real perpetrator of the crimes for which Beck was found guilty. Rarely has evidence been so overwhelming as it was in this case, yet Beck was subsequently discovered to be absolutely innocent. "There is no shadow of foundation," stated the official report, "for any of the charges made against Mr. Beck," and the Home Office awarded him £5,000 compensation. Yet it took Adolf Beck nine years to establish his innocence; had he been convicted of a capital offence and executed in consequence instead of imprisoned, the error would probably never have come to light. There is obviously far less chance of discovering a miscarriage of justice when a person is executed, since he is no longer able to prosecute his claim. Yet many people have been sent to the scaffold on evidence far less overwhelming

than that upon which Beck was wrongfully convicted.

Let us consider for a moment what the prosecution's evidence in the Beck case amounted to. In addition to the "expert's" testimony and that of the prison officers, there were fifteen independent persons who came forward to testify on oath that, each on a different occasion, they were in the company of the accused and actually saw him commit the offences with which he was charged. Such evidence was truly overwhelming; yet, as we have seen, it was subsequently discovered to be entirely mistaken.

✓The importance of the Beck case in this connection is twofold. *Firstly, the fact that evidence so overwhelming proved mistaken, should bring an element of doubt into nearly every trial, and make the infliction of an irrevocable penalty unthinkable. Secondly, the fact that few errors of justice come to light in connection with capital offences, should not lead us to suppose that such mistakes do not occur.* Beck was nine years establishing his innocence. By the infliction of the capital penalty the person primarily concerned is prevented from urging his claim. After the execution we can hardly expect the authorities to pursue the matter or divulge disquieting evidence subsequently brought to light; with the

actual death of a person, the interest of friends will naturally wane, and evidence of innocence be much less likely to be sought for than if he were serving a long term of imprisonment. In these circumstances it is surprising how many cases are actually known of the execution of innocent persons, some of them within living memory.

Lord Shaw, in his memoirs, instances the Doherty case, in which he was himself briefed, as such a flagrant instance of wrongful execution that from that hour he ceased to believe in the punishment of death. He adds that subsequent cases have only deepened his conviction.\*

In 1876 William Habron, a youth of eighteen, was sentenced to death for the murder of a policeman at Whalley Range, near Manchester, but reprieved on account of his youth. Two years later Charles Peace, when condemned to death for another crime, confessed himself the real culprit of the Whalley Range murder, and stated that he had been in the court when Habron was condemned. The matter was investigated and Peace's confession substantiated.† Habron was thereupon released, and granted £800 compensation by the Home Office for his wrongful

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\* *Letters to Isobel*, by Lord Shaw of Dunfermline.

† See Gaskell's *Memoirs of Charles Peace*. Also *The Trials of Charles Peace*. Edited by Teignmouth Shore. Hodge, 1926.

imprisonment. There could have been no compensation had Habron been executed.

In Lincolnshire in 1869 Priscilla Biggadyke was convicted of poisoning her husband, dragged to the scaffold and executed, protesting her innocence. Subsequently, a man on his deathbed confessed that he had entered the kitchen and unknown to Mrs. Biggadyke, put poison in the pudding she was making.\*

Four men were hanged in 1905 for a murder in California. It was subsequently discovered that only one of those executed had anything to do with the crime and the remaining three were absolutely innocent.†

Speaking in Parliament in 1869, the Home Secretary said that within half a year, out of the eleven cases of Capital Punishment sentences (each following very careful trials by jury) five sentences had been set aside by him. Of one he stated: "It is beyond all question that Sweet was an innocent man." In three of the other cases it became evident that the persons concluded to have been murdered had died from accident or other causes. One of the remaining six cases not reprieved was that of Mrs.

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\* Quoted Tallack, *Penological & Preventive Principles*, pp. 246 247.

† Quoted Kirkpatrick, *op. cit.*, p. 47. This is only one of numerous cases quoted of the recent execution of innocent persons in the U.S.A.

Biggadyke already referred to, *whose innocence was established after the execution*.\*

To the general reader, such extraordinary miscarriages of justice may appear difficult to explain; to the student, they are but few of the many illustrations of the fallibility of human judgment. Many of these tragic mistakes—and how many others never discovered—have been due to *mistaken identity*.

Anyone who takes the trouble to investigate the subject, cannot avoid the conclusion that testimony as to personal identity is very unreliable. Sometimes this is due to wilful misrepresentation, and there are historic cases in which men have been sent to the scaffold on perjured evidence. More usually, however, such errors are due to false evidence given in perfectly good faith. "Illustrations are numerous to show that what are supposed to be the clearest intimations of the senses are sometimes fallacious and deceptive."†

Superficially, it would seem that "multiplicity of evidence" is proof against error, and this view is often argued with great plausibility. Thus *The Times*‡ recently maintained in a special article that "identification by two witnesses constitutes a

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\* See Tallack, *op. cit.*, pp. 246, 247.

† Wills, *op. cit.*, p. 179.

‡ April 16th, 1924. Quoted by Clifford Sully, *Mistaken Identity*, p. 14. Longmans Green & Co., 1925.



probability amounting to almost a certainty that the prisoner is in fact the man required." This argument is fundamentally unsound. "It can never be assumed that witnesses are independent in the sense required for such a light-hearted application of the law of probability. They may have seen the same portrait, or be identifying on the ground of the same partial resemblance or by virtue of the same suggestion. At least they will all partake of the uniformity of human nature, which is itself sufficient to produce in many cases ample agreement in falsity."\* We have already seen how in the Beck case, fifteen women gave mistaken testimony. Other such instances could be cited.

Many investigations have been made showing the weakness of human memory as to time, space and the details of events; important things will often be omitted, and a good deal added through suggestion or confusion with other events and experiences. Experiments which have been staged to test the value of evidence reveal extraordinary inaccuracies or agreements in error, accompanied by a certainty and conviction which almost appear to increase in proportion to their falsity.

Fifteen students were subjects in a testimony experiment. Asked the date of a local flood, three

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\* Clifford Sully, *op. cit.*, p. 14.

prosecution—and therefore cannot be said to be conducted in a necessarily impartial spirit. Evidence of personal identity is thus seen to be unreliable and of doubtful value.

Another piece of evidence open to grave suspicion, is the testimony of so-called “experts.” The fact that in many trials “experts” appear on both sides should be sufficient indication of the true value of their evidence. The “Thorne” murder trial was very disquieting in this respect. A certain famous pathologist called by the prosecution testified that the death of the murdered person had taken place in a certain way, while three other well-known “experts” called for the defence testified on oath that in their view it was “impossible” for death thus to have taken place. The jury in this case accepted the prosecution’s view, though how a jury of laymen (from a medical point of view) could decide on such a highly technical question is difficult to understand. The confusion was increased by one of the learned judges in the Court of Criminal Appeal who said that the jury had rightly been influenced by evidence other than that of the medical experts. If, however, there was a doubt as to the *possibility* of death taking place in a particular way, *probabilities* are surely irrelevant. It is necessary to know whether an act is *possible* before one con-

siders its *probability*. The result of this particular trial was very disquieting.

In considering the value of "expert" evidence we must realise how particularly undesirable it is for a Court to be unduly influenced by experts who, by the frequent demands made upon their services, are vested with a sort of supernatural infallibility out of all proportion to the true value of the evidence they may give. The handwriting expert called by the prosecution in the Beck case made a profound impression on the Court, and was one of the chief factors leading to Beck's wrongful conviction; yet at the subsequent Home Office inquiry he admitted that had he known Beck had different bodily marks to those of the guilty man, this would have influenced his view about the handwriting!

I have mentioned two factors in any trial—the possibility of seemingly overwhelming evidence of identification being wrong and the doubtful value of the evidence of so-called "experts." There are many other factors which may lead to errors of justice. Enough has been said, however, to indicate how fallible human justice may be. Romilly told us many years ago that it were vain to hope for all error to be excluded from any human institution, and since he wrote these

words, the suffering of many innocents has confirmed them in blood. An irrevocable punishment like Capital Punishment can only be safely imposed by an infallible tribunal. "I shall ask for the abolition of Capital Punishment," said Lafayette, "until I have the infallibility of human judgment demonstrated to me," and in the light of such evidence one can do no other than re-echo his words.

### SUMMARY OF CHAPTER VI

*The irrevocability of Capital Punishment is a strong argument against it, for there have been proved cases of the conviction of innocent men.*

*Investigation shows that even what appears to be overwhelming evidence of guilt, may be, and sometimes proves to be, completely mistaken.*

CHAPTER VII  
CAPITAL PUNISHMENT AND TRIAL  
BY JURY

I have given the subject of capital punishment much consideration, and have no hesitation in saying that I do not regard the Death Penalty as essential to the security and well-being of society; on the contrary, I believe its total abolition, and the greater certainty of conviction which would follow, would tend to diminish rather than increase the crimes it is intended to prevent.

WHITTIER.

A less punishment which is certain, will do more good than a greater punishment which is not certain.

BECCARIA.



## CHAPTER VII

### CAPITAL PUNISHMENT AND TRIAL BY JURY

WE now come to consider the Death Penalty's effect upon the whole principle of trial by jury. In view of the danger of inflicting an irrevocable punishment upon innocent persons, the responsibility resting upon jurors in a murder trial has been seen to be a very heavy one.

There are many jurymen and many witnesses who in the past have sunk into melancholia or even committed suicide, as a result of continued brooding over the question of whether as a matter of fact they have helped to condemn an innocent man.\*

Such an experience will inevitably encourage juries to give persons accused of murder "the benefit of the doubt" whenever possible, and this principle is thoroughly sound. In practice, however, this does not mean that the conviction of innocent persons is thereby avoided, for as was seen in our

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\* Rt. Hon. C. F. G. Masterman, "My Home Office Experience," *Sunday Chronicle*, May 3rd, 1925.

examination of the Beck case,\* mistakes can occur in connection with evidence upon which no doubt whatever appears to exist; the greatest errors may occur in the very cases in which the accused person's guilt appears most evident. It does, however, mean that there is a lower percentage of convictions in capital charges; juries sometimes return verdicts contrary to the facts and guilty men go free. This fact is officially admitted in the Introduction to the Criminal Statistics for 1924, in which the Home Office states:

In consequence of the strong proofs of guilt necessary for conviction of crimes punishable by death, the proportion of acquittals for murder is higher than for most other crimes, and an *acquittal in such a case does not necessarily imply failure to detect the perpetrator of the crime.*†

Now, however much we may deplore the infliction of Capital Punishment, society has a duty to its members; and the release of a murderer without adequate consideration and careful treatment will perhaps endanger the lives of others, and is greatly to be deprecated.

This actually happened in the case of Harold Jones, a boy of fifteen from Abertillery, who in

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\* See above, chapter VI.

† Criminal Statistics, 1924, p. 3. Italics mine.

February, 1921, was charged with murdering a little girl of nine who came to the shop where he was employed, to buy poultry grit. He took her down the road to a shed where it was kept, and she was not seen again until next morning early, when her body was found in a lane near by. Jones's handkerchief was found in the shed where he was alleged to have lured the girl; it was practically proved at the trial that he had the key of the shed in his pocket all day and had opportunities of disposing of the body at night. The boy was proved to have lied in his evidence at certain points. The jury, consisting of seven men and five women, acquitted the boy, though from the evidence there could have been little doubt of his guilt. After the trial Jones was escorted triumphantly back to his home in a charabanc decorated with flags. Abertillery was also bedecked with flags for the occasion and Jones addressed the crowd from the balcony of an hotel!

The tragic sequence followed all too rapidly. In July of the same year, Jones was re-arrested on the charge of murdering another little girl by the gruesome method of severing her jugular vein over the scullery sink. On this occasion, the boy confessed to both crimes, was found guilty of murder, and sentenced to be detained during His Majesty's

pleasure. This case not only shows the real danger caused to society when a jury returns a verdict contrary to the facts, but also illustrates the morbid sentiment often aroused in a trial of this kind.\* A case somewhat similar to that of Jones, was that of Alfred Gamble who murdered and mutilated a male child at Islington. Gamble was acquitted and soon afterwards all but murdered another child. He was then decreed of unsound mind and detained as insane.

The fact that a slight shadow of doubt exists as to the guilt of a person charged with homicide, may be a very strong argument against the infliction of an irrevocable punishment like the death penalty ; it is not, however, sufficient reason for letting a strongly suspected person go quite free without a period of careful inquiry and observation. A certain number of such cases are, of course, bound to occur in connection with any legal procedure, but if, as the Home Office suggests in the official report above referred to, the acquittal of an obviously guilty man is *more likely to happen* where the death

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\* Had Jones been found guilty in the former trial he could not have been executed as he was just below the legal age. It is, however, doubtful whether this fact was generally known, and even if it were, the usual association of the death penalty with the crime of which he was accused was sufficient to account for the extraordinary public excitement which was manifested and which only encouraged him in his wrongdoing.

penalty is involved, this fact constitutes a powerful argument against it. It is significant in this connection that States which have abolished Capital Punishment appear to have a higher percentage of convictions in proportion to committals than those which retain it. The Warden of Sing Sing Prison confirms this, as far as America is concerned :

There is a somewhat greater facility in obtaining convictions for homicide in abolition States and in those which permit a choice between life imprisonment and the death penalty than in the States which arbitrarily impose death.\*

This consideration also has an important bearing on the question of deterrence.†

There is a further aspect of the subject which demands our notice. Not only do juries sometimes hesitate to convict because of absence of definite proof, but also because they definitely disapprove of Capital Punishment. Historically the revolt of the jury constituted one of the chief causes of the drastic reform in our criminal law in the early part of the last century. The strong public outcry against the infliction of Capital Punishment for trivial offences took practical form in a refusal of

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\* Lawes, *op. cit.*, p. 58.

† See above, chapter II.

many juries to convict, even when they knew the accused to be guilty.\*

The Buffam case is a famous illustration of this kind of protest. Just over a hundred years ago a man was tried in Lincolnshire for stealing a horse, and was in imminent danger of the gallows. Eleven of the jurors were for hanging, but an obstinate old farmer, Buffam by name, refused to agree to this verdict, and the jury were in consequence locked up. The eleven jurors tried argument, but failed to move old Buffam, although we are told that "hunger sharpened the wits and pointed the logic of his eleven companions." Then "they tried persuasion; it failed—he wouldn't hang a *man* for stealing a *horse*, not he, let what would happen.' They tried threats but old Buffam was too sturdy to acknowledge a fear! At last they humbled themselves into entreaty, and pleaded that they were starving. 'Well, starve!' said Buffam. 'We shall get nothing to eat until we return a verdict,' was suggested. 'Never mind,' he retorted, 'I'll eat the ceiling, but I won't give in!' This vow settled the dispute; consciences were adapted to circumstances, and 'not guilty' was returned as the verdict of them all. However, the affair was not soon forgotten, and the old farmer went by the name of

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\* See above, chapter I, pages 14-15.

‘Eat-the-ceiling Buffam!’ for the rest of his life.”\* Frequent protests of this kind forced the Government’s hand, for the law obviously became ludicrous when it was thus openly defied.

There are many indications of a growing uneasiness to-day as to our justification of Capital Punishment in cases of murder. Opinion may differ as to the wisdom of a jury protesting against the Death Penalty by bringing in a verdict contrary to the facts, but whether such a course be considered right or otherwise, the failure of the legislature to give some expression to the growing opposition to Capital Punishment among an increasing section of the community, may cause many people to use this effective method, as men did in the past, to bring about the reform they so strongly desire.

Some attention should perhaps be given at this point to the personal problem of jury service, for many opponents of Capital Punishment may welcome guidance as to the right course to adopt when summoned for service on a jury in a murder trial. The matter is primarily, of course, a personal one, and should be based upon individual judgment. A few general observations, however, may not be out of place.

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\* *The Law on its Trial*, pp. 46, 47, Alfred H. Dymond, 1865. Also quoted Carl Heath, *On Punishment*, 1913.



The legal profession—at any rate the judges—would probably lay it down that a juror was concerned with a decision on facts and not with the punishment. Such a ruling, however, does not bear examination. When the direct and immediate result of returning a verdict of “guilty” is the pronouncement of the death sentence, the jury may not be *legally* responsible for the sentence, *but it is most decidedly morally responsible*. What then should a juror do? To adopt the policy of accepting jury service with the avowed intention of returning a “not guilty” verdict—as was done in the last century as a protest against excessive punishments for trivial offences—would be a very dangerous practice and greatly to be deprecated. The acquittal of a man guilty of horse-stealing is a very different thing from allowing a person who may be a dangerous homicide to go free. As we have seen above, the sequel to the wrongful acquittal of Harold Jones was the speedy repetition of his crime.\* Furthermore, a juror has a moral obligation to fulfil the conditions of his oath and bring in a verdict in accordance with the facts.

Juries sometimes attempt to solve the problem by accompanying a verdict of “guilty” with a recommendation to mercy. Such a recommendation

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\* See above, pages 136-137.



has, however, no statutory power and is frequently overruled.\* What alternative courses of action are there? A juror can, of course, refuse service altogether, the result of which would probably be a fine for contempt of Court. Perhaps a more reasonable course would be to attend the Court and ask to be excused from service, as one who conscientiously objects to Capital Punishment. A judge would seldom refuse such an application, since by doing so he would run the risk of a second trial owing to disagreement on the jury. This course is undoubtedly the most correct one, though there is perhaps a further alternative† by which an abolitionist may feel able, consistent with his oath and his obligation to protect society, to give practical expression to his objection.

In law there is a comparatively clear distinction between "wilful murder" and "manslaughter"; in psychology, no such clear-cut difference exists.

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\* In the Jacoby case (1922) the jury coupled its verdict of guilty with a recommendation to mercy. For nearly twenty years no one so young as eighteen had been executed in England, and there were strong reasons for believing that the sentence would not be carried out. Jacoby was, however, executed.

† The view which follows is included for the sake of completeness since it is widely held among abolitionists. It is not put forward as the author's own view. Legal opinion as to its correctness in law appears to be divided.

The whole idea of absolute responsibility breaks down before the realisation that conduct is largely influenced by personality traits built up through the interaction of heredity and environment. Actions which appear quite freely chosen may in actual fact result much more from the interplay of various social and physiological factors over which the individual may have little control. One may know all about the *actions* of a person without truly knowing that person himself.\* In the light of this knowledge there will almost always be an element of doubt in a murder trial—however straightforward the case may appear—as to whether the offence was really the outcome of wilful intention, or the product of social and physiological factors which have clouded the mind and thwarted rational decision. The existence of this element of doubt as to *absolute* responsibility justifies the accused person in claiming its exercise in his favour. For this reason a juror may feel it right in a murder trial, with complete loyalty to his oath, to seek to limit his verdict to one of manslaughter on the ground that he cannot be absolutely sure that the offence was completely wilful and premeditated. Such a verdict the judge would be bound to accept,

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\* This question of responsibility will be dealt with more fully in chapter VIII.

for long constitutional usage for centuries has established the absolute right of juries to return whatever verdicts they believe right. If in a murder trial the jury returns the verdict of "not guilty of murder but guilty of manslaughter," the judge would have no alternative but to pronounce sentence as if the charge itself had been one of manslaughter. In practice, this would probably mean the maximum sentence of penal servitude for life. The English jury in practice, therefore, has the same opportunity to decide whether a person guilty of homicide should be sentenced to death or imprisonment, as in certain States in the American Union where this alternative is specified by statute. If this view be accepted, the best course of action for an abolitionist to adopt, would be to accept service on a jury if summoned, and then seek to restrict the verdict in this way. He would probably succeed! The right of a jury in a murder trial to bring in a manslaughter verdict is little known, and many juries would seize the opportunity with relief. There is the possibility, of course, that the jury would disagree, in which case the trial would have to be re-heard. Though this prolongs the ordeal of the accused person, he would probably welcome the respite. Moreover, were he subsequently convicted of murder, the fact of disagreement in the first trial

would constitute a powerful plea in favour of ultimate reprieve.

As has already been said, the whole attitude of the abolitionist to jury service is one of personal responsibility, and action must essentially be based upon individual judgment. Those opponents of the Death Penalty who are liable to be called upon for jury service, would be wise to consider which of the courses outlined above constitutes for them their most constructive protest, consistent with social responsibility and loyalty to the oath.

### SUMMARY OF CHAPTER VII

*The horror of Capital Punishment encourages jurors to bring in verdicts contrary to the facts, whereby dangerous homicides are sometimes allowed to go free. The personal problem of jury service in capital charges is discussed.*

CHAPTER VIII  
CAPITAL PUNISHMENT, RESPONSIBILITY  
AND THE CAUSES OF MURDER

The severity of our judgment of criminals is also often excessive, because the imagination finds it more easy to realise an action than a state of mind.

LECKY.

Retribution. . . . The fuller becomes our insight into the springs of human conduct, the more impossible does it become to maintain this antiquated doctrine.

WILLIAM McDUGALL.

We shall never get rid of the criminal till we cease to separate ourselves from him, till we make his interest our interest, till we share, willingly and consciously, the responsibility of the society which has produced him.

LAURENCE HOUSMAN.

## CHAPTER VIII

# CAPITAL PUNISHMENT, RESPONSIBILITY AND THE CAUSES OF MURDER

### I.—THE QUESTION OF RESPONSIBILITY.\*

**I**S the murderer fully responsible for the crime he or she has committed? This is the question which must now be considered with the subject of this volume, and such a consideration is all the more important because the question does not admit of a simple answer. Unfortunately, there are many people with little or no knowledge of the working of the human mind, whose opinions are expressed in very positive terms, and who—not knowing any better—adopt the simple view that “every murderer *deserves* to be hanged.”† Such an expression is merely a modern survival of the *lex*

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\* This section does not pretend to be an exhaustive treatment of the question of responsibility but is merely an attempt to outline a personal position.

† See below, chapter IX. We are not here considering whether society is well rid of the murderer, but are examining the plea that he “deserves to be hanged.”

*talionis*, and is largely based on a misconception of the nature of the human will.

There is a widespread idea that man is an absolutely free moral agent and that a criminal is one who deliberately chooses to do evil rather than good. According to this view "there is an entity called the will, which presides over the mind and is regarded as the ultimate director of conduct; it is further held that man must be required to exercise his will in accordance with certain defined ethical principles and to be accounted 'responsible for his actions' unless he is incapable of knowing 'right from wrong.'""\*

The trend of modern psychological thought, however, leads to an entirely opposite conclusion, namely, that conduct is not "determined by an unknowable something called free will, but by personality traits built up through the interaction of heredity and environment.†

In other words, the conduct or behaviour of a human being is chiefly (though not entirely) determined by the whole of his past history, each emotion

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\* M. Hamblin Smith, Medical Officer of H.M. Prison, Birmingham, *Psychology of the Criminal*, p. 9. Methuen.

† Dr. Kirkpatrick, *Capital Punishment*, p. 16. Philadelphia, 1925. I am not here concerned with the complex problem of which of these two forces, heredity or environment, is the more potent influence. Suffice it that they *together* constitute a powerful factor in determining conduct.



and each experience contributing its share to the erection of a structure which may be termed his personality or character. Thus, whilst an individual appears to have an entirely free choice at any moment in his life, that choice is necessarily affected by his past experiences, emotions and characteristics, and is restricted accordingly. The power of choice is never absent, but under some circumstances it becomes so difficult to exercise it rightly that it might almost seem to be non-existent.

It is quite impossible in a volume such as this to discuss adequately the question of free-will versus determinism ; it must, therefore, suffice to point out that in considering a criminal's responsibility for his crime, we must always bear in mind that his power of choice (i.e. his ability to refrain from the crime) is very largely influenced by heredity, by education, and by all the factors of his previous experiences and environments. Bad social conditions, faulty physical and mental states, whether hereditary or the results of ignorance, apathy or environment, all influence conduct ; the sum of such influences is invariably profound, and attempts to judge the conduct of an individual apart from these factors is both unscientific and unjust. Conduct is relative ; a man is not "good" or "bad" in relation to some absolute moral code, but according to his

actions within the limited area of freedom which is his.

Once we admit, as we surely must, that all conduct is influenced in this way, we shall have to consider not only the quality of the crime but the nature of the individual who has committed it. We shall then come to concentrate our attention less on the crime than on the criminal—not so much on what a man has *done*, as what he *is*. When once it is realised that the past history of the criminal plays a most important part in the commission of his offence, it will be seen to be unscientific to inflict the same punishment on all guilty of the same kind of crime. “Criminals differ widely in hereditary constitution and as products of their environment; it is absurd to hold to an objective test of punishment based on the nature of the crime committed, rather than to suit the treatment to the nature of the individual.”\* This emphasis upon the act of the criminal, rather than upon the forces which have helped to make him what he is, is one of the most serious errors made by the advocates of a purely retributive punishment.

In our ignorance of some of these important factors we may reach a wholly superficial conclusion and say that a man “deserves to be hanged,” yet

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\* Kirkpatrick, *op. cit.*, pp. 16, 17.

if we only knew it, he may have been so unfortunate in his heritage or early environment (including the lack of proper moral or psychological training) that he may actually, in spite of his anti-social act, have been putting up a much better fight against adverse factors than many of us who have been more fortunate in our heritage and training, and whose conduct is therefore less anti-social. If conduct *were* fairly judged in relation to the various forces that have influenced it, the judge on the bench and the prisoner in the dock might sometimes have to change places ! A better understanding of the part played by environmental and other factors in the causes of criminal acts would give to society a fuller recognition of *its* share of responsibility in either tolerating, or actually encouraging, the conditions that render good social conduct difficult on the part of its less fortunate members. We should then be driven to seek and remove the causes of crime rather than to make scapegoats of those who fall in an unequal combat. This is no easy task, and there is no short cut to success, but the key to the problem lies undoubtedly in individualised treatment based upon a thorough investigation into the heredity, environment and mentality of the individual offender.

## II. THE CAUSES OF MURDER

If conduct be an expression of mental processes influenced by many different factors, wide generalisations as to the causes of murder are obviously impossible; there may be as many causes of murder as there are murderers. Each case of murder will demand the fullest individual investigation into the past history of the murderer, including his mental, as well as his physical, career and development, before it is possible to arrive at any true understanding of the conditions that have led up to it. Then, and then only, will it be possible to prescribe equitable treatment, and if necessary, punishment.

Like other so-called unnatural crimes, murder often results from quite abnormal mental reactions long antecedent to the crime. We have already seen that many murders are due to passion. A crime of passion is commonly regarded as the result of a sudden outburst or an equally sudden release of some power which is commonly expressed as "loss of control." Enough is, however, now known of the action of the human mind for it to be certain that in adults such sudden acts are seldom as instantaneous as they appear. In most instances they are a result of a large number of emotional reactions, each apparently small in degree but which, ex-

tending over a long period of time, eventually cloud the judgment, thwart rational decision and seriously weaken the will. This is especially true of *sexual crimes*, which are by no means limited to sordid crimes of outward passion, but are often the basic cause of other crimes which superficially appear quite unconnected with sexual emotions. Repressed sexual complexes are frequently at the root of murders of an apparently non-sexual character, just as similar complexes are at the root of much insanity that superficially appears unconnected with sex. The man who without apparent motive murders his wife and children, with whom he has lived on seemingly affectionate terms, only too often proves to be a victim of a repressed sex complex, and though he could not legally be considered insane and not responsible for his action, he cannot always be said to be a free moral agent with full responsibility for what he has done.

The psychology of *fear* is one of the most complicated branches of the study of the human mind, and it is now recognised that when a man is subject to fear, his mind rapidly becomes unbalanced in several directions, and unless he is properly cared for and his fear complex disintegrated, he may eventually commit some seriously anti-social act, the most likely ones being either suicide or murder.

The fear complex may have been built up in a most complicated manner, and be due to misunderstandings, hallucinations and emotions which do not appear to have the slightest connection with the crime or the victim. To understand such a complex may require an intensive study of the individual extending over many months, and even then can only be attempted after years of specialised training. No judge or jury could possibly undertake such an investigation and consequently the primary *cause* of such murders (which obviously lies in the mind of the murderer) is never known, and the proximate cause—which may be relatively unimportant—is the one upon which the criminal is judged.

When greater attention is paid to the application of psychology for ascertaining the primary *cause* of each murder, we shall hear far less of the phrase “he deserves to be hanged.”

In the ordinary course of life, there are no official means of dealing with people whose actions are not sufficiently anti-social to bring them within the reach of the law. Yet some of the habitual thoughts of such people may be such as to lead inevitably to evil unless some extraneous circumstance intervenes or some strong regard for conventional requirements acts as a special brake in the conversion of thought

into action. Where this restrictive influence does not exist or when, for some reason, it suddenly weakens or is withdrawn, the normal effect of the built-up thought-complex occurs and a crime or other anti-social act may be committed.\*

The most obvious case in which this extraneous "censor" or "brake" is weak, is in connexion with those persons generally recognised as *mentally unbalanced* or *abnormal*. Such people commit a considerable proportion of the murders which occur each year,† and as their defective mentality is fairly obvious they are usually dealt with accordingly. An increased recognition of the danger to the State of allowing complete freedom to many mental defectives, and a more intensive application of the Mental Deficiency Act (1913) to secure their segregation and the limitation of their opportunities for propagation, would certainly reduce the number of potential murderers and would be a further step along the path of progress. It would not, however, help in the case of potential murderers of another class, for which little or no proper means of legal control is at present provided, i.e. those persons who are recognisably abnormal in their mental

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\* This is the explanation of a murder or other crime "suddenly" committed by a person who apparently is socially normal.

† See statistics quoted above, chapter II.



state, yet not sufficiently so to be rightly dealt with under the Mental Deficiency or the Lunacy Acts.

The existence of this class is painfully obvious to all those who have made a study of juvenile delinquency,\* and whilst the activities of a few enthusiasts have succeeded in securing a fairly adequate investigation and treatment for those of this type who come within the purview of the Children's Courts, it is a fact that practically no attempt is made to provide suitable treatment for those of maturer years who have escaped control during earlier life, or who have passed out of control owing to lack of legal powers to continue supervision beyond some more or less arbitrary age-limit. At present such persons only come before the authorities when their anti-social behaviour has already brought them within the reach of the law; and then for those in this group who have committed a murder, the only legal penalties are death or a life sentence.†

It is clearly both unscientific and unjust to subject persons with a disordered mentality either to the Death Penalty or to the rigour of a life sentence. Prevention should be the first line of defence

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\* See Healy's *Individual Delinquent* and C. Burt's *Juvenile Delinquent*.

† i.e. if such a person is reprieved. The Court of Criminal Appeal, basing its decision on the MacNaughton ruling of 1843, has repeatedly refused to regard such persons as "guilty but insane."



against crime, and if a correct diagnosis were to be made in adolescence or early adult life, appropriate treatment would probably turn a considerable proportion of slight defectives or abnormal persons into useful citizens; some would doubtless need life-long supervision and control, but this should be under the less repressive conditions of non-penal institutions.

The cases which may be represented by that of a man who "puts up" with his victim's behaviour for some years but eventually can "endure it no longer" and in a moment of weakness commits a murder, are even more complex. Such cases may easily be understood when the salient facts are known, but these are seldom disclosed. Yet when ascertained, they show the building up of a complex which must usually have only one result. Such cases can scarcely be described correctly as "wilful murder" though it is equally erroneous to regard the murderer as "insane" in the legal sense of this much misunderstood term. What is certain, however, is that the cause of the murder having been removed, the murderer is not likely to repeat the crime, and to execute him is clearly futile.

The existing Lunacy Acts provide tolerably adequate powers of detention for those murderers who are held to be certifiably insane, such as those

suffering from *paranoia* or *systemised delusion* ;\* it has, however, often proved impossible to secure sufficient evidence to procure certification in cases of murder committed whilst a person is in the states known as *masked epilepsy* and *post-epileptic automatism*.† Murder is by no means an uncommon result of one of these mental afflictions. In the case of *paranoia* the sufferer believes himself to be the victim of some plot or persecution, and commits some violent act to draw attention to his supposed grievance ; attacks on royalty and prominent personages are frequently of this type.

When through the inadequacy of our legal definition of insanity or through lack of evidence of his mental condition, a murderer cannot be certified as insane, a jury may easily reach a wrong conclusion. Absence of evidence to the contrary is no proof that the murderer had no anti-social complex which is equivalent to, but legally to be distinguished from insanity. From a psychological point of view, many—possibly most—murders are due to some abnormal condition in the mind of the murderer, who should, therefore, be treated as defective or abnormal according to his individual needs.

The foregoing statements are sufficient to indicate

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\* See Mercier, *Crime and Insanity*, pp. 69, 70.

† Mercier, *op. cit.*, pp. 58-68.

how widely divergent may be the mental reactions involved when some mental abnormality can be definitely recognised. There are, in addition, a number of social and biological factors which have an influence on mental life, and a little must now be said concerning some of the more important of these.

*Poverty* is closely linked with many kinds of crime, because in a state of poverty many highly undesirable mental complexes are necessarily formed, especially in crowded areas. The greater the struggle for existence and the more serious the poverty, the larger is the number of irritations leading to lack of poise and mind-control; consequently, a very slight increase in the strain makes the circumstances unbearable, and relief is sought by the commission of a crime. This view is amply confirmed by those most familiar with the Courts. Judge Atherley Jones declared at the Newcastle Sessions in January 1925, that "the great mass of crime in this country is based upon poverty." Equally significant is a remark in the introduction to the Judicial Statistics, referred to above,\* in which, speaking of the convicted murderers for Scotland, it was said, "There too, as in the case of England and Ireland, the bulk of them belonged to the poorer classes."

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\* See chapter II.

The statement that "poverty breeds crime" does not mean that poor people are more vicious—they are not—but that the conditions which we know as "poverty" make life so difficult for many people, that to commit crime is to follow the line of least resistance. This being the case, it seems certain that with the reduction of poverty and its inevitable consequences, its squalor, its dulness and misery, its lack of education, of ideas and of opportunity, one of the most fertile causes of murder will have been removed.

*Bad housing* is undoubtedly a contributory cause of murder. It does not need a very great stretch of the imagination to realize that a quarrel in the home is more likely to end in sordid tragedy when a slum family of ten is living in two rooms, than when a middle class family of two occupies a ten-roomed house in suburbia. Murder may be committed under almost any circumstance, but where people are herded too closely together, conditions which lead to it are far more likely to arise. In this sense, many of the murders due to violent quarrels, jealousy, intrigue and revenge (which in the official analysis already quoted\* accounted for 237 murders out of a total of 551), have undoubtedly been influenced by overcrowding in the home.

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\* See chapter II.

*Alcoholism* has a large share in the commission of murder, as its action is such as to lessen a man's sense of responsibility, so that under the influence of alcohol he would do many things which he would not do if in complete control of his actions. In this respect alcohol may be said to produce a temporary insanity, and logically a man who commits a murder whilst partially intoxicated ought to be treated as though he were temporarily insane.\* In the official analysis already quoted a further 90 out of the 551 murders were *directly* attributed to drink, and there is little doubt that drink was a contributory factor in many of the other cases.

Quite apart from its direct toxic effect on the human system, alcohol is often the *indirect* cause of crime; "alcohol often produces poverty and so produces bad environment, evil companions, opportunities of bad experience, quarrelling in the home,"† and these build up undesirable mental states conducive to crime.

*Firearms.*—Any student of the criminal statistics in the various countries must be impressed by relative frequency of homicide where firearms are readily obtainable. We have already had cause to note this when considering the homicidal rate in

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\* See Mercier, *op. cit.*, pp. 45-55.

† M. Hamblin Smith, *Psychology of the Criminal*, p. 14.

the U.S.A.\* It is a well-known fact that stringent regulations in a country governing the possession of firearms will reduce the number of murders. There is indeed a close relationship between this question and that of national disarmament, for it is no coincidence that murders increased in most countries immediately after the war. The greater the respect shown for the sanctity of human life, in *all* human relationships, the fewer will be the number of murders.†

In this short summary it has only been possible to consider in the briefest manner possible some of the evidence indicating that—without adopting an extreme deterministic attitude—the murderer may be said to be rarely, if ever, an entirely free and responsible moral agent; his crime is usually the result of one or more mental complexes built up during a long period, and he has been influenced—in most cases profoundly—by a variety of hereditary, physical, psychological and social factors over many of which he has little or no deliberate control. In the face of this kind of evidence, it is no longer

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\* See chapter III.

† Spear in his *Essays on the Punishment of Death*, 1851, p. 66, tells of a man executed at Exeter who on being removed from the bar after sentence of death had been passed, exclaimed to the bystanders, “ I have killed many men to please the King, and why should I not kill one to please myself ? ”

possible to justify a purely retributive basis of punishment such as is implied in the capital penalty.

### SUMMARY OF CHAPTER VIII

*In the majority of cases at least, the murderer is not an entirely free moral agent ; his action has been influenced, often profoundly influenced, by one or several of a variety of factors, over many of which he may have little or no control ; in view of such facts, a purely retributive basis for punishment such as is implied in the capital penalty can no longer be justified.*





CHAPTER IX  
CAPITAL PUNISHMENT AND ETHICS

1  
When a certain proceeding or institution is shown to be very wrong indeed, there is a certain class of people who rush to the fountain head at once and will have no less an authority for it than the Bible on any terms. . . .

Though every other man who wields a pen should turn himself into a commentator on the Scriptures,—not all their united efforts pursued through all our united lives could persuade me that . . . executions are a Christian law. . . . If any text appeared to justify the claim, I would reject that limited appeal, and rest upon the character of the Redeemer and the great scheme of his religion.

If we are still to inflict Capital Punishment because of the Mosaic Law, it would be equally reasonable to establish the lawfulness of a plurality of wives on the same authority.

CHARLES DICKENS.

The Chaplain does not kneel to pray  
Beside his unhallowed grave,  
Nor mark it with that blessed Cross  
That Christ for sinners gave,  
Because the man is one of those  
Whom Christ came down to save.

OSCAR WILDE.

## CHAPTER IX

### CAPITAL PUNISHMENT AND ETHICS

SO far in our study we have considered the futility of Capital Punishment, the many objections to be made against it and its demoralising social consequences. No attention has yet been given to its relation to ethical standards. There is reason for this. Many people do not pretend to base their conduct on moral principles and are frankly guided by expediency. There is, of course, no real conflict between things expedient and things morally right. A "practical" policy which violates the moral law is not truly "practical" and will prove inexpedient in the end; an ideal which is not "practical" is no ideal at all. Nevertheless to those who are frankly indifferent to moral principles, the whole force of an argument may be vitiated by reference to ethical values which to them appear dogmatic assertions incapable of proof. For this reason we have endeavoured to conduct our investigation into the "expediency" of Capital Punishment—what many would call the "practical

arguments"—without reference to questions of morality. Yet to those who *do* believe that social conduct should be based upon an ethical concept, the latter is of paramount importance. If Capital Punishment can be shown to be morally indefensible, then to them no considerations of expediency can possibly be made to justify it; if the Death Penalty prove totally inexpedient, this fact does not exempt them from considering its ethical basis. Indeed even the most "practical" of the Death Penalty's supporters will seldom allow one to ignore the ethical side. How many times, when Capital Punishment is demonstrated to be futile and unnecessary, is one met with the retort, to which some reference has already been made,\* that in any case *the murderer deserves to be hanged*. Such a remark—a survival of the *lex talionis* of the Mosaic Law—is in itself an admission that social behaviour is not alone determined by the demands of expediency but by obedience to some ethical standard, even though it be, as in this instance, an extremely primitive one.

In the deepest sense one cannot argue about moral principles. Their ultimate foundations are to be found in the deeper places of intuition which lie beyond intellectual argument. We rightly relate

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\* See above, chapter VIII.

questions of conduct to the moral codes which have come to us from history ; we turn to the life and ideas of those great nations of antiquity whose ethical standards have influenced modern civilisation so greatly, the Greek, the Roman and the Hebrew ; we seek to harmonise conduct with some particular interpretation of Christian morality ; but in the last resort our very interpretation of these various external authorities must rest upon an intuitive moral judgment within ourselves. We cannot prove ; we know. It is before this judgment of our highest standard of moral values within, that all questions of personal and social conduct must ultimately be judged. It is before that tribunal that Capital Punishment stands most condemned.

Tolstoy expresses this truth in his account of a Paris execution of which he was an eye-witness :

When I saw how the head was separated from the body and as it dropped noisily into the basket, I understood, not with my reason but with my whole being that no theories of the rationality of modern civilisation and its institutions could justify this act ; that if all the people in the world, by whatever theory, had found it necessary, I knew that it was useless, that it was evil. I knew also that the standard of good and evil was not what people said or did, not progress, but myself and my own heart.\*

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\* *Confessions*, 1879.

Logically, if the Death Penalty *were* morally justifiable, the executioner's calling would be considered an honourable one. The fact that even its keenest supporters shrink from such a man with loathing and exclude him from their circle, is in itself an indication that Capital Punishment stands morally condemned.

I learn from the newspaper accounts of every execution (wrote Charles Dickens)\* how Mr. So-and-so and Mr. Somebody-else and Mr. So-forth shook hands with the culprit, but I never find them shaking hands with the hangman! All kinds of attention and consideration are lavished on the one; but the other is universally avoided like a pestilence. Is it because the hangman executes a law which when they once come near it face to face, all men instinctively revolt from?

The horror with which the executioner is regarded in the public mind is so great that the Common Law Courts gave effect to it in a memorable judgment in an action for defamation.

A respectable citizen had alighted at an Inn in the City of Norwich the night before an execution—one of the bystanders noticing a real or fancied resemblance to the executioner of the day, said loudly: "You are Jack Ketch." The citizen protested that he was not Jack Ketch, but the defamer

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\* *Daily News*, March, 1846.

persisted in saying that he was, and a mob who quickly collected proceeded to duck in the horse-pond this unfortunate victim of mistaken identity. Their victim sued his traducer for damages for slander ; there was no doubt of the special damage ; but the defence pleaded by way of demurrer that the allegation could not possibly be defamatory. "The Executioner," they alleged, "is a public official, necessary to the security of the State, and it is no more a libel to describe a man as an Executioner than to say that he is a Judge." But the Court rejected this contention. They held that the charge of being a hangman was calculated to bring its victim into "hatred, ridicule and contempt," and therefore—if not in fact justified as true—was undoubtedly actionable as defamation, whether libel or slander depending upon the medium of the accusation.\*

The fact that even those who uphold the Death Penalty themselves revolt from their agent who carries it into effect, shows clearly that even the advocates of Capital Punishment find difficulty in harmonising it with their own standard of moral values within.

Unfortunately for many people, this inward witness is too often subordinated to conventional codes or obscured by primitive instincts and desires which easily cloak themselves in the garments of

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\* *Law Journal*, August 28th, 1926.

morality. Chief among these is the instinct for revenge—the secret basis of many of the punishments overtly justified on other grounds. Capital Punishment is not only upheld as necessary for the protection of society. Show it to be futile and unnecessary, and many people will still advocate it on the ground that it is a “just” retribution. The eye for an eye and a tooth for a tooth idea to which reference has already been made, is itself an expression of this instinct for revenge. Scientifically it is untenable and it belongs to a very primitive stage of spiritual development; yet it is always being quoted in support of Capital Punishment, often by the most saintly people, who would never dream of giving expression to such a doctrine in their own personal lives. It does not—if they were honest with themselves—in any way harmonise with their noblest conception of social conduct, but is the cloak with which they obscure their more primitive impulses.

Those who would justify Capital Punishment by reference to the Mosaic Law are not even logical. They do not apply the *lex talionis* literally nor would they wish to do so. They do not literally believe that the removal of the eye is the only punishment morally justifiable for him who has injured that organ in another; they would probably



condemn a magistrate who ordered the removal of a tooth from a man because by assault he had knocked a tooth from his fellow. Why, if they have given up the practice in all these other respects, should they ask for its literal application in the case of homicide. Moreover, murder was not the only capital offence in the Mosaic code. There were at least thirty-three others. Kidnapping, blasphemy and the eating of blood were capital offences, and one could be put to death for the suffering of an unruly ox to be at liberty, or for violating the Sabbath. Are the kindly souls who justify Capital Punishment by reference to the Mosaic Law also willing that all these other offences should be made Capital? The mere suggestion of such a step is absurd. We no longer execute people for gathering sticks on the Sabbath day; we do not make the extraction of eyes and teeth a part of our penal practice; we have dispensed with animal sacrifices in worship and discarded many of the old injunctions concerning marriage and social customs; why then should we insist on retaining this final remnant of an ancient penal code belonging to the same period of Hebrew development? Indeed, even under the Mosaic code, the punishment of death was not a cool, deliberate act on the part of society as Capital Punishment is

to-day. The executioner was the nearest akin to the one who was slain, and was appropriately called "the avenger of blood."

Scholars tell us moreover, that even the *lex talionis* must not be taken too literally and a monetary fine was usually enforced to serve as compensation to the victim's family. Originally this law replaced, we are told, a more savage law. It was an effort to "suit the punishment to the crime" but when it was found impossible to secure absolute equity without some kind of measure, monetary compensation was introduced. The conception of the cities of refuge implied that a difference was made between voluntary and involuntary crime, and the risk of hasty punishment was realised. In the sanctuary of the Temple, a man guilty of involuntary murder could make atonement for his sin and seek to remodel his life in the light of faith. The victim's friends had time to let their passion subside with the most poignant agony of their grief, before they sought revenge for their beloved.

We are told that the Pharisees opposed the Sadducees, while they sought to abolish the Death Penalty. In Deuteronomy xxi the responsibility of the township for the death of a citizen is emphasised. The Rabbis in the course of years began to deprecate the infliction of Capital Punishment. In the "Mishnah" it is stated\* that a Sanhedrin were called

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\* "Capital Punishment and the Old Testament," by the Hon. Lily Montagu, J.P., *St. Martin's Review*, May, 1926.

murderers if the Death Penalty was inflicted more than once in seven years and certain Rabbis affirmed that once in seventy years was far too frequent.

The Hebrew conception of social conduct was not crystallised in the Mosaic Law but was essentially progressive. Micah's appeal, "What doth the law require of thee but to do justly, to love mercy and to walk humbly with thy God," marks a distinctly loftier conception; and "God himself does not desire the death of the evil doer but that he should turn from his evil ways and live," is far removed from the vindictiveness of "whoso sheddeth man's blood by man shall his blood be shed."

And if the Death Penalty be out of harmony with the loftier conception of the Jews, how much more is it inconsistent with the ethical code of Jesus—the so-called "new dispensation"—which to many people registers man's highest spiritual development and finds its truest response in his noblest intuitions. Capital Punishment is a negation of the Christian principle. There is no question of quoting Biblical texts or believing particular dogmas about Christianity; it is wider and deeper. It is rooted in the life and teaching of Jesus himself. It was said above that our ultimate ethical concept was not external but within ourselves. But it is just here, in man's intuitive moral judgment, that

the essential Christian principle receives its final hall-mark of authority. There is a quality about the practice and teaching of Jesus—whatever our theological ideas about him may be—which harmonises with our noblest standard of moral values within and registers the high-water mark of moral achievement. It is of this ethical concept that Capital Punishment is a concrete denial.\*

What was the attitude of Jesus to men? It was one of unconquerable faith in their latent possibilities. None was too degraded for his redemptive care. It was to an alien woman of doubtful character at a well that he unfolded some of his loftiest philosophy, and he never doubted her capacity to receive it. He did not shrink from moral failures or outcasts but respected even the worst of them as a living human soul. To the Eastern mind none was more repulsive than the leper. His fingerless hands and decaying joints revolted the æsthetic feelings and were dangerously infectious. But when Jesus met a leper, his sense of their common humanity was

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\* This view concerning the essential immorality of Capital Punishment would probably not be endorsed by official Roman Catholic opinion since the latter, upon the authority of S. Thomas Aquinas, would justify the taking of human life by some authorised authority if the good of the community demanded it. Even on this ground, however, the Death Penalty cannot be upheld since, as has been shown in the foregoing chapters, it is, in fact, wholly inexpedient and against the best interests of the community.

so strong that he "stretched forth his hand and touched him." When men brought the adulterous woman to him (her offence according to Jewish law was a capital one) it was *her accusers* that he shamed, by awakening within them a sense of their own shortcomings, but he dismissed her with a "Neither do I condemn thee—go and sin no more." Jesus never *condoned* moral failure—he did not in this case—but he never lost faith in the latent possibilities within everyone.

As with his actions so with his teaching. God was the good shepherd seeking the lost, the father always waiting to welcome the wanderer back again to the family of love. Judaism was based upon legality; obedience to the law brought its reward and disobedience its punishment. But Jesus taught that God does more than justice requires because he is our father.

In one of his Yale lectures Sylvester Horne summarised the Christian principle thus :

The Gospel affirms that in God's sight all the suns and stars that people infinite space, are of inferior worth to one human spirit, dwelling it may be in the degraded body of some victim of drink or lust, some member of the gutter population of a great city, who has descended to his doom by means of the multitudinous temptations with which our so-called civilisation environs him. It is a

romantic creed, but if it is not true, then Christianity itself is false !

Here then is the issue between Capital Punishment and the Christian principle joined. Capital Punishment is based upon the assumption that the murderer is beyond the reach of spiritual reclamation and is unfit to live ; Christianity tells us that every human spirit is of infinite worth in the sight of God.\*

In the light of the Christian principle, our attitude to any man, however evil or depraved he may be, must be that of uncompromising love. We must always seek to restore him to his right place in the human family. Our aim must be, not to destroy but to redeem.† It may be difficult to

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\* Refer also to Lactantius (A.D. 305) : "When God prohibits killing . . . He warns us that not even those things which are regarded as legal among men are to be done. And so it will not be lawful for a just man . . . to accuse anyone of a capital offence since killing itself is forbidden. And so in this commandment of God, no exception at all ought be made to the rule that it is always wrong to kill a man, whom God has wished to be regarded as a sacrosanct creature."

† To assert that a murderer is incapable of being reclaimed, is to deny established fact, for even under the present system, every other convicted murderer is reprieved, and reprieve means freedom after a given number of years. There is no recent case known of a man condemned to death in England and reprieved, who on his release has ever committed another murder. And if after penal servitude, a man is fit to be granted his freedom, how much more so after intelligent and scientific treatment,

see all the implications of this principle and the best measures wherewith to achieve its final expression in the treatment of crime. It admittedly is. There can, however, be no shadow of a doubt as to where Capital Punishment stands. It denies the very essence of the Christian concept, and, by violating man's noblest intuitive moral judgment, stands condemned.

### SUMMARY OF CHAPTER IX

*Capital Punishment violates our belief in the sanctity of human life and stands morally condemned. The business of a Christian community is to redeem the offender.*





CHAPTER X  
THE ALTERNATIVE

Government has not been slow to punish crime, nor has society suffered for want of dungeons and gibbets. But the prevention of crime and the reformation of the offender has nowhere taken rank among the first objects of legislation.

CHANNING.

Let it not be supposed that social order will depart with the scaffold ; the social building will not fall from wanting this hideous keystone. Civilisation is nothing but a series of transformations. For what then do I ask your aid ? The civilisation of penal laws. The gentle laws of Christ will penetrate at last into the code and shine through its enactments. We shall look upon crime as a disease. Evil will be treated in charity instead of anger. This change will be simple and sublime. *The Cross shall displace the gibbet.*

VICTOR HUGO.

## CHAPTER X

### THE ALTERNATIVE

SO far consideration has been given to the manifold objections to Capital Punishment, and the case against it has been seen to be overwhelming. "But what," it will be asked, "is it proposed to substitute in its place?" Curious ideas are in circulation as to the alternative proposed. Many people seem to believe that the abolitionist wants the murderer to go free, whereupon, as one old lady expressed it in a letter to her local Member of Parliament, "we should all be murdered in our beds"; others continually suggest that the abolitionist desires to pamper the murderer. Let us say at once, therefore, that the immediate alternative which is proposed is the substitution of a long term of imprisonment.

Such a proposition at once creates difficulties. To many people who are rightly critical of present-day prison conditions, this alternative seems but little advance on the Death Penalty. Some will even go so far as to suggest that a long term of

imprisonment is even worse than hanging.\* In view of what has already been said concerning the ethics of punishment and the causes of murder the proposed alternative is admittedly no ideal one. Nevertheless, it certainly constitutes *the next step* in the process of reform; it is the alternative immediately practicable, and is, therefore, the reform for which we must press. There is always continuity about law. No considerable reform in our criminal law has ever come as a bolt from the blue, but has always proceeded by a process of mitigation with the existing law as its point of departure. No idealistic or scientific scheme of individualised treatment for murderers has the present support of public opinion and can, therefore, be said to be within the realm of immediate practical politics; even so, it would be unreasonable to press for its adoption in the treatment of this particular crime apart from others. The humanising of our present prison system is admittedly a question which badly needs our attention; it should not be confused, however, with the removal of a penalty the very nature of which precludes any possibility of reform.

✓ The Death Penalty differs from all other punishments in our penal code in that it pays not even lip service to the idea of reformation. The murderer—

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\* See below, p. 190-191.

it says in effect—is beyond the reach of reclamation. In theory other punishments are intended to reform, and recent experiments in the specialised treatment of first offenders indicate that in some respects at least the Home Office is making serious attempts to transfer this lip service into a living reality. Capital Punishment is the one survival of the purely retributive idea of punishment, and for this reason its abolition is the next step in penal reform. With its passing will have come a new era, with reformation as an integral part of our whole penal system. Our task will then be to concentrate our efforts until this idea becomes the predominating one.

Admitting the substitution of a long term of imprisonment to be the immediate alternative to Capital Punishment, what exact form should the alternative take? I would suggest that the transition stage be quite a small one, namely, that we should inflict exactly the same penalty upon the murderer whom we now execute, as is now inflicted upon the murderer who is reprieved.

At present when a person is found guilty of wilful murder, the Court has no alternative but to pronounce sentence of death. The power of reprieve is vested in the Home Secretary. An Abolition Bill would transfer this power of reprieve to the Court, and make it compulsory and unconditional. In

place of Capital Punishment, therefore, there would be substituted a fixed sentence of penal servitude for life, subject to all existing powers of remission. In practice a person convicted of wilful murder would be sentenced to penal servitude for life, and the term of his sentence made the subject of periodic review, as is now the case with reprieved murderers.

It has also been suggested that statutory value might be given in an Abolition Bill to a jury's *recommendation to mercy*, by empowering the Court of Criminal Appeal in such cases to substitute for the sentence of penal servitude for life passed at the trial, any less sentence which it may consider just. At present a jury's recommendation has no statutory power whatever and is frequently ignored by the Home Secretary to whom it is referred.\* Recognition in the manner suggested would give value to a jury's recommendation and at the same time provide the safeguard of its reference to the jurisdiction of a legal tribunal such as the Court of Criminal Appeal.

There are three other offences besides murder which, according to the ordinary criminal law of England, are still punishable by death, namely, (1) high treason, (2) piracy with violence and (3) setting fire to dockyards, arsenals, etc. In

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\* See p. 143.

practice only one execution for treason has taken place during the last eighty years,\* and for the other offences the penalty has become completely abrogated by disuse. An Abolition Bill would, however, need to contain some formal provision for the substitution of other penalties for these offences.

Such is the proposed alternative.† It can hardly be considered a revolutionary one. It is, however, the next step. And with Capital Punishment abolished we can then direct our efforts to the creation of a more scientific, reasonable and humane prison system.

Certain objections are frequently made to this immediate alternative to the Death Penalty, and in conclusion these must now receive our brief attention.

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\* In 1917.

† It is often suggested that the next step might well be the gradation of murder, Capital Punishment being only reserved for murder of the "first degree." It is not without significance that the ex-Home Secretaries and retired officials from whom this proposal seems most frequently to emanate do not appear to have taken any active steps to effect this reform during their own terms of office. The gradation of murder was *unanimously* recommended over sixty years ago by the Royal Commission of 1866, though no Government has ever given effect to it. Since then, though science has shown us even more clearly than ever the need for a gradation of murder, the experience of other countries and our increasing knowledge has surely indicated that Capital Punishment is undesirable in itself for the treatment of *any* grade, and the complete abolition of the penalty is not beyond the reach of our immediate achievement.

Reference has already been made to the statement that a long term of imprisonment is worse than hanging. This claim is made by two kinds of people, by those who support Capital Punishment as an effective deterrent and only condemn the proposed alternative in order to ease their consciences, and by others, who, convinced that the Death Penalty should be abolished, yet fear that the proposed alternative is even worse. The attitude taken by the former of these two classes is of course quite illogical. If life imprisonment were worse than hanging, it follows that it would necessarily be a more effective deterrent and therefore should be preferred. As we have already seen, some 150 murders are still committed annually in this country, and a punishment worse than hanging, such as life imprisonment is claimed to be, would presumably help to reduce this number. One cannot have it both ways. Either life imprisonment is not worse than hanging, or it is. If it is, then Capital Punishment is not the best deterrent.

The position of those whose criticism of the proposed alternative is based upon humanitarian grounds, demands more careful consideration. In the first place, as has already been said, those who advocate the substitution of life imprisonment, do not claim it as an ideal alternative but only the



next step in a general process of penal reform. The most effective policy in any reform movement is to secure the maximum support possible for the next step forward. In advocating life imprisonment as the immediate political alternative to the Death Penalty we are but following this course. With Capital Punishment out of the way, we can then concentrate our efforts on other penal reforms which we may believe to be necessary.

A long term of imprisonment is no doubt a horrible alternative, but it cannot be said to be open to all the grave objections that Capital Punishment is. Sir Basil Thomson, whose extensive prison experience should enable him to speak with some authority, tells us that "No Governor has ever yet met a condemned prisoner who would refuse a reprieve or who did not ardently long for one."\* This should be fairly conclusive testimony.

Moreover, if prison were really worse than hanging, it should concern us that only the worst murderers are hanged, and if there are any extenuating circumstances, the condemned person is reprieved, and therefore subject to the severer punishment!

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\* *The Criminal*, by Sir Basil Thomson, p. 179. Hodder & Stoughton, 1925. Refer also *All's Well that Ends Well*, Act IV, Scene 3: "Let me live, sir, in a dungeon, i' the stocks, or anywhere, so I may live."

But surely Miss Royden, in a recent address, gave us the best answer to this question :

If you feel like that, throw yourself into the reform of our penal system ! Do not let a man die because you are too lazy to get the penal system reformed. When a man is dead you can do nothing. As long as he is imprisoned you can do something for it rests upon us whether the prisons are to be humane or not. It seems to me the refuge of the sluggard to say a man is better hanged than imprisoned.

Another objection often made is that by the substitution of life imprisonment the State would be thereby burdened with the cost of supporting the murderer in prison. The practical answer to this objection is, that there is no reason why prisoners should be a burden on the community. Mons. Almquist, *Chef de l'Administration Pénitentiaire* in Sweden, tells us that in his country, "The offender condemned to penal servitude for life will usually, during the long period in prison, acquire sufficient skill as a craftsman to produce much more than the amount required to maintain and guard him in prison."\* If this does not obtain in our own country some inquiry into the conduct of our prisons appears to be called for !

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\* See Howard League Pamphlet No. 7. 1925.

But the argument of expense is really a mean argument unworthy of a Christian country. If the abolition of the Death Penalty is right in itself, the cost of the alternative is no argument, for a man's life cannot be reckoned in terms of money. Moreover, few of those who make this claim would be willing to press it logically to its conclusion. Seventy per cent. of those persons convicted in murder trials in this country are at present sent either to prison or criminal asylums.\* Little objection has been raised to this procedure and yet it is idle to plead expense for the remaining 30 per cent. when it does not constitute the deciding factor in the case of the rest.

There is a eugenic objection sometimes raised to the substitution of life imprisonment for Capital Punishment. A life imprisonment sentence in present practice is subject to periodic review and generally means ultimate release. Though experience shows that serious crimes are practically unknown among murderers released after serving a long term of imprisonment, yet it may be extremely undesirable to allow certain persons of tainted heredity to go free. It is probable, however, that there is power even under the existing Mental Deficiency Acts to segregate such persons as "moral imbeciles."

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\* See table, pages 40-41.

In any case, such power could easily be obtained. Such a difficulty can easily be overcome and is certainly no excuse for Capital Punishment. It is indeed one of the curious paradoxes of the present practice that the more normal murderer, who is most likely to respond to reformatory influences, is the very one we hang, whereas the insane, the weak-minded, or mentally unbalanced person is left alive.

It is sometimes said that because a murderer is abnormal or degenerate, he is therefore of no use to society and unfit to live. The ethical aspect of this particular question has already been dealt with.\* There is, however, a simple analogy which may perhaps be quoted here as not wholly irrelevant. When a family has a perfectly useless cripple within its circle, that cripple is kept alive, fed, clothed, cared for. From a utilitarian point of view, it would seem more sensible to get rid of him, yet no woman would agree to reduce the expense of her family by killing him off, and the law would soon be down on her, if she did. So with the larger family of which the murderer is a unit. It may appear more sensible and utilitarian to kill him ; yet is there any more justification for doing so in his case than for the woman, burdened with family responsibilities,

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\* See chapter IX.

who keeps her crippled child alive? And if we begin killing off the murderers, why not the insane, the hopelessly deformed, the corrupt? Where does it end?

To assert that society has the right to kill those of its members who are of no use to it or who are judged unfit to live, is a very dangerous argument which might be applicable to many persons and groups other than murderers!

The substitution of imprisonment for Capital Punishment is undoubtedly the next step in penal reform. The earlier this is effected the sooner will our ultimate aim be realised, namely the protection of society by the reformation of the offender, and the achievement of this through individualised treatment by scientific and humane methods.

### SUMMARY OF CHAPTER X

*The immediate alternative to Capital Punishment is the substitution of a long term of imprisonment; not as an ideal substitute but as the next step in a general process of penal reform.*

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## INDEX

- Alcoholism as a cause of murder, 163
- Almquist, M. Victor, quoted, 73-74, 192
- Alternative to Capital Punishment, 185-195; Cost of, 192-193
- Among the Broad Arrow Men* quoted, 104-107
- Aquinas, S. Thomas, cited, 178 note.
- Argentine, 50, 76
- Austria, 50, 51
- Bacon quoted, 22
- Bad housing as a cause of murder, 162
- Bankers, petition of, 14
- Barrington quoted, 18
- Beccaria quoted, 134
- Beck case cited, 121-123, 131, 136
- Beecher, Henry Ward, quoted, 2
- Belgium, 50, 51-53
- Bell, execution of, 5
- Bentham quoted, 120
- Berry quoted, 97 note, 102 note
- Biggadyke, case cited, 125-126
- Blake, Major F. W., trial cited, 97-98 note, quoted, 100
- Bosanquet, Mr. Justice, 5
- Bowen-Rowlands, Mr. E., 25, 56 note, 76 note, 77 note
- Bramwell, Sir George, quoted, 13 note
- Brazil, 50, 76
- Bright, John, quoted, 110
- British Medical Journal* quoted, 97 note.
- Broadmoor Criminal Lunatic Asylum, 113
- Brougham cited, 14
- Buffam case cited, 140-141
- Burt, Dr. Cyril, 158 note
- Buxton, Sir Thomas Fowell, Bt., 15 note
- Bye, Raymond, quoted, 82 note
- Capital offences in England, 4, 188-189
- Capital Punishment: abolition of, in other countries, 45-91; and the acquittal of guilty persons, 136-139; the alternative proposed, 185-195; attempts to abolish for trivial offences, 6-8; creates misplaced sympathy for murderer, 114-115; as a deterrent, 3, 18, 23-41, 139; effect upon children, 115-116; effect upon juries, 135; effect

- upon prison officials, 99-103 ; effect upon the prison population, 103-108 ; errors of justice, 121-132 ; and ethics, 169-181 ; for forgery, 14 ; gladiatorial effect of, 111-112 ; and instinct for revenge, 174 ; legal for offences other than murder, 188-189 ; list of Abolitionist States, 50 ; the Press and the community, 111-118 ; and prisons, 95-108 ; and protection of society, 3-19 ; relative infrequency of, 37-41 ; repeal for stealing, etc., 8 ; and question of responsibility, 149-153 ; and suffering caused to relative of victim, 116-117 ; and trial by jury, 135-146
- Causes of murder, 154-165
- Channing quoted, 184
- Children, effect on, 115-116
- Christianity and Capital Punishment, 169-181
- Colombia, 50, 76
- Combination Act, 16
- Commission, Royal, of 1866 on Capital Punishment, 13 note, 14 note, 18, 189 note
- Conduct influenced by heredity and environment, 149-165
- Conway case cited, 97 note
- Costa Rica, 50, 76
- Crimes against property and the person, difference, 17-19
- Criminal Appeal, Court of, 188
- Criminal Law of England, 4 ; reform of, 186
- Criminal Statistics quoted, 24, 28-32, 136, 161-163. see also under "Statistics."
- Daily Chronicle* quoted, 48
- Darling, Lord, quoted, 36, 60
- Denmark, 49, 50, 54-56
- Derham, Mrs., quoted, 118 note
- Deterrence, question of, 3, 18, 23-41, 139 ; certainty a condition of, 14, 36, 87 ; for murder, 23-41 ; for offences against property, 3-19
- Devon, Dr. James, quoted, 100-101
- Dickens quoted, 22, 168, 172
- Doherty case cited, 124
- Drawing and quartering, 5
- Drink as a cause of murder, 28-29, 163
- Dymond, Alfred H., 6 note, 141 note
- Dymond, Jonathan, quoted, 120
- Ecuador, 50, 76-77
- Ellenborough, Lord, quoted, 7-8
- Ellis, 102
- Environment, 149-165
- Epilepsy, 160
- Ethics and Capital Punishment, 169-181
- Eugenic objection to abolition, 193-194
- Evidence, unreliability of, 126-131
- Executioner, degrading effect upon, 101 ; public shrinking from, 172-173

- Executions : Cause suffering to prison officials, 95-103 ; description of, 97-99 ; effect upon prison population, 103-108 ; ghastly mishaps at, 97 note ; Home Office instructions concerning, 97-98 note ; public, 18, 95-96. See also under "Capital Punishment" "Expert" evidence, doubtful value of, 130-131
- Fallières, M., 57, 60  
 Fear, psychology of, 155-156  
 Finland, 50, 56-57  
 Firearms, 47, 87, 163-164  
 France, 50, 57-62  
 Frankland, Col., quoted, 6
- Gamble case cited, 138  
 Gaskell, 124 note  
 Goodall case cited, 97 note  
 Gradation of murder, 189 note  
 Greville quoted, 5  
 Grévy, M., 57, 60
- Habron case cited, 124  
 Hall, Mr. J. W., quoted, 61 note  
 Harcourt, Sir William, quoted, 19  
 Hardy, Mr. Thomas, quoted, 110  
 Healy, 158 note  
 Heath, Mr. Carl, 141 note  
 Henry VIII, number of executions in the reign of, 4  
 Heredity, 149-151  
 Hill quoted, 18 note  
 Hobhouse and Brockway quoted, 100, 101, 104, 108  
 Holinshed quoted, 4 note
- Holland, 49, 50, 62-65  
 Hollander, Dr. Bernard, quoted, 22  
 Homer quoted, 117 note  
 Homicidal rate, factors influencing the, 46-47, 86-88, 154-165  
 Honduras, 50, 77  
 Horne, Sylvester, quoted, 179-180  
 Housman, Mr. Laurence, quoted, 148  
 Howard League, 57 note, 116 note  
 Howard League Pamphlet No. 7, quoted, 49, 54, 63, 64, 68, 73, 192  
 Hugo, Victor, quoted, 2, 44, 184  
 "Hungry Forties," 16
- Identification, method of, 129-130  
 Imprisonment said to be worse than hanging, 186, 190-192  
 Insanity, 157-160  
 Italy, 50, 65-67
- Jones, Judge Atherley, quoted, 161  
 Jones, Harold, case of, cited, 136-138, 142
- Juries : perjured verdicts of, 15-16 ; refuse to convict because of Capital Punishment, 15-16, 139-141  
 Jury service, problem of, discussed, 141-146
- Kirkpatrick, Dr., quoted, 86, 125 note, 150, 152

- Lactantius quoted, 180 note  
 Lafayette quoted, 120, 132  
*Law Journal* quoted, 173  
 Lawes, Mr. Lewis E., 65, 66, 75, 81, 82 note, 84, 87; quoted, 78-79, 88, 139  
 Lazell, suicide of, 102  
 Lecky quoted, 148  
*Lex talionis*, 149-150, 170, 174  
 Liepmann, Dr., quoted, 52, 53, 70, 71, 72  
 Lithuania, 50, 67  
 Longfellow quoted, 94  
 Lunacy Acts, 159  
 Lunacy, legal definition of, 158 note  
 Lynchings and Capital Punishment, 85-86  
  
 Macdonald, Sir John, quoted 30-32, 34  
 McDougall, William, quoted, 148  
 Mahon case-cited, 113  
 Masked epilepsy, 160  
 Masterman, Rt. Hon. C. F. G., quoted, 135  
 Mental Deficiency Act, 157, 193  
 Mercier, Dr., 160 note, 163 note  
 Micah quoted, 177  
 Miscarriages of justice, 121-132  
 Mistaken identity, 121-123, 126-130  
 Montagu, The Hon. Lily, quoted, 176-177  
 Mosaic Law, 170, 174-177  
 Münsterberg quoted, 128-129  
 Murder: causes or motive of, 26-34, 154-165; different definitions of, 45-46; gradation of, 189 note; hour usually committed, 31; and insanity, 157-160; and manslaughter, difference between, 143-144; usually the murder of women by men, 31-32; a passionate crime, 18, 26-34; rarely premeditated, 26-36  
 Murderer: "deserves to be hanged," 149, 156, 170; potential, 25; possibility of reclamation, 180 note; "unfit to live," 194-195  
 Murders, number of, in England and Wales, 24, 38  
 Murray, Mr. David C., quoted, 96-99  
 Mussolini, Signor, cited, 67  
  
 Norway, 49, 50, 67-70  
  
 Olivecrona, quoted, 52  
*Observer* quoted, 102  
  
 Palm, Andrew, quoted, 97 note  
 Paranoia, 160  
 Peace, Charles, 124  
 Peel, Sir Robert, 14  
 Penal servitude "worse than hanging," 186, 190-192  
 Peru, 50, 77  
 Phillips, quoted, 9, 13  
 Pickpocketing a capital offence, 18  
 Plead, refusal to, 4-5  
 Poisoner, failure to deter, 34 note  
 Portugal, 50, 70

- Poverty and murder, 31-32, 161-163
- Press publicity: demoralising influence of, 111-115; leads to imitative crime, 112-113; question of censorship discussed, 114
- Prison System Inquiry Committee, 101, 108
- Public executions, failure to deter, 18, 95-96
- Punishment, Capital. See "Capital Punishment"
- Queensland, 50, 88-89
- Racial animosity influences homicidal rate, 46, 86
- Recommendations to mercy, 142-143, 188
- Reprieves, 117-118
- Responsibility, 143-144, 149-153
- Retributive punishment, 23, 165, 174, 187
- Revenge, instinct for, as primary basis for Capital Punishment, 174, 187
- Rhodes case cited, 113
- Robbery rarely the motive of murder, 32-33
- Roberts, Rev. W., cited, 18
- Rogers, Samuel, quoted, 5
- Romilly, Sir Samuel, 4 note, 5, 6, 110, 121, 131
- Roumania, 50, 70-72
- Royden, Miss Maude, quoted, 192
- Sexual passion as a cause of murder, 28-33, 155
- Shakespeare quoted, 191 note
- Shaw, Lord, quoted, 124
- Shepherd, Major, case cited, 129 note
- Shore, Mr. Teignmouth, 124 note
- Smith, Dr. M. Hamblin, quoted, 150, 163 note
- Spear quoted, 164 note
- Statistics: difficulty of comparisons *between* countries, 45-47; England and Wales: Commitments for stealing, etc., before and after repeal of Capital Punishment for such offences, 10-13; causes or motive of murders committed, 28-29; convictions for murder in proportion to population, 49; murders known to police, 38-41, 49; persons executed, acquitted, etc., 38, 40-41. Foreign countries, 49, 52-89. See also under separate countries
- Stella Maris trial cited, 118 note
- Suffield, Lord, quoted, 15
- Sullivan, Dr., quoted, 113
- Sully, Mr. Clifford, quoted, 126-128
- Sweden, 49, 50, 72-74, 192
- Switzerland, 49, 50, 74-76
- Tallack, 125 note, 126 note
- Thackeray quoted, 94
- Thomson, Sir Basil, quoted, 191
- Thompson case cited, 102

- Thorne case cited, 113, 130-131  
*Times* quoted, 96, 126-127  
Tolstoy quoted, 171  
Torp, Dr. Carl, quoted, 55-56  
Tyburn, 5  
Uruguay, 50, 88  
U.S.A., 46, 50, 77-88, 139  
Van der Aa, Dr. J. Simon  
    quoted, 64-65  
Venezuela, 50, 88  
War, the effect of on homicidal  
    crime, 164  
*Westminster Gazette*, the Editor  
    of, quoted, 111-112  
White, Nicholas, case of, cited, 5  
Whittier quoted, 134  
Wilde quoted, 168  
Wills, 121 note, 126 note  
Wills, Sir Arthur, quoted, 36  
Woxen, M. F., quoted, 68-70



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